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CABINET.**THE OPERATION OF DOMINION LEGISLATION.****MERCHANT SHIPPING LEGISLATION.***Memorandum by the Secretary of State for Dominion Affairs.*

IT is, of course, now a matter of history that the Imperial Conference of 1926 defined the constitutional position of Great Britain and the Dominions: But this definition left, and necessarily left, several problems of importance unsolved, and several anomalies existing, particularly in relation to the legal position.

Broadly, the questions involved are, first, that there remains a considerable body of law passed by the Parliament at Westminster which still applies to the Dominions and cannot be repealed or modified by them; secondly, that under the existing system the Government at home retains certain rather ill-defined powers with reference to Dominion legislation; and, thirdly, that the Parliament at Westminster can, and the Dominion Parliaments cannot, legislate with extra-territorial effect. These questions proved so complex and intricate that, owing to the short time available at the meeting of the 1926 Conference, it was not thought possible, or, indeed, safe, to make any immediate pronouncement beyond a statement of certain underlying principles; it was considered that the best course would be to set up expert bodies to enquire into and report upon the matters concerned. The Report of the Inter-Imperial Relations of the Imperial Conference accordingly recommended (Cmd. 2768, pp. 16 to 18), and the Conference agreed, that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines:—

“To enquire into, report upon and make recommendations concerning—

(i.) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty, or authorising the disallowance of such legislation.

(ii.)—(a.) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.

(b.) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order and good government of the Dominion.

(iii.) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report” (*i.e.*, the report of the Inter-Imperial Relations Committee).

I ought, perhaps, to summarize the statements as to underlying principles referred to above.

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(a.) With regard to powers of disallowance and reservation of Dominion legislation, the Inter-Imperial Relations Committee proposed that it should be placed on record that, apart from provisions embodied in Constitutions or in specific Statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

(b.) With regard to projected legislation in one of the self-governing parts of the British Commonwealth which might affect the interests of other self-governing parts, the appropriate procedure was defined as being "previous consultation between His Majesty's Ministers in the several parts concerned."

In this connection it was suggested that, in future, uniformity of legislation as between the different self-governing parts of the Commonwealth could best be secured by the enactment of reciprocal statutes based upon consultation and agreement.

(c.) With regard to the legislative competence of the self-governing members of the Commonwealth other than the United Kingdom, and in particular with regard to legislation with extra-territorial effect, the Conference thought that it should be placed on record that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the assent of the Dominion concerned.

Further, the Inter-Imperial Relations Committee pointed out (Cmd. 2768, pp. 18 and 19) that, while uniformity of administrative practice was desirable, and, indeed, essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal statute relating to merchant shipping, viz., the Merchant Shipping Act of 1894, especially sections 735 and 736, with the constitutional status of the several members of the British Commonwealth of Nations. The Committee, therefore, recommended, and the Conference agreed, that the general question of Merchant Shipping Legislation should be remitted to a special Sub-Conference, which should meet at the same time as the Committee on the Operation of Dominion Legislation referred to above; and that the Sub-Conference (which would include representatives of India, as well as Great Britain and the Dominions) should be invited to advise on the following general lines:—

"To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

On consideration of these recommendations the late Government set up, in February 1927, an Inter-departmental Committee for the purpose of preparing material for the proposed Committee and Sub-Conference respectively. They informed the Governments of the various Dominions that the Committee had been set up and that material prepared by them would be circulated when ready, and they added that it would be convenient if any material which Dominion Governments might prepare could similarly be circulated.

In the course of 1928 the Inter-departmental Committee presented memoranda surveying existing legislation, and in December 1928 these memoranda were circulated to the Dominions. A copy of the despatch enclosing the memoranda, and copies of the memoranda themselves, are annexed (Appendices I, II and III).

In November 1928, prior to the circulation of these memoranda, my predecessor telegraphed to the Dominions to the effect that, in view of the forthcoming general election, it appeared that the next meeting of the Imperial Conference could not conveniently take place before 1930, and that, therefore, the most appropriate time for the meeting of the Committee and Sub-Conference would appear to be the early autumn of 1929, in order to allow a good margin for the preliminary study of the documents, and also to enable the Reports of the Committee and Sub-Conference to be ready in time for consideration by the Imperial Conference. All the Dominions concurred in this proposal, although the Commonwealth Government, who were anxious that the Imperial Conference should be held if possible in 1929, would have preferred an earlier date for the meeting of the Committee and Sub-Conference.

On the 23rd March last my predecessor suggested that the Committee and Sub-Conference should meet in London on the 8th October next, and it is understood that this date is generally acceptable to the Dominions.

I assume that my colleagues will agree that the change of Government in this country should not entail any change of view with regard to the time of meeting of the Committee and Sub-Conference in accordance with the recommendations of the Imperial Conference of 1926, and, accordingly, that the present arrangements for the meeting of the Committee and Sub-Conference in London on the 8th October next should proceed.

It will be appreciated from the documents annexed to this memorandum that the subjects to be dealt with by the Committee and Sub-Conference are of great complexity and importance. It is clearly, in my opinion, desirable that, in view of the political issues involved, we should be represented by Ministers as well as by officials. Further, as the questions arising are primarily of a legal character, one of our representatives should, I suggest, be the Attorney-General. The Government of the Irish Free State have already informed us that they propose to be represented by the Minister for External Affairs, the Attorney-General and Departmental officials, and I learn from Sir William Clark, our High Commissioner in Canada, that it is not impossible that Canada will be represented by the Prime Minister, the Minister of Labour and the Minister of Justice. The Commonwealth of Australia will be represented by Sir Harrison Moore, a distinguished constitutional lawyer, who was until recently Dean of the Faculty of Law at the University of Melbourne; it is, of course, possible that the Commonwealth Government, on learning that other Governments propose to be represented by Ministers, may decide to be similarly represented.

In these circumstances, I recommend to my colleagues that I should be authorised to inform the Dominions that it is the intention of His Majesty's Government in the United Kingdom that members of the Government should be their principal representatives at the Committee and Sub-Conference. The members of the Cabinet more particularly concerned are the President of the Board of Trade (for Merchant Shipping matters) and myself, and these might, I think, be appointed, with the Attorney-General, as principal representatives. They should, I suggest, be empowered to invite other Ministers to assist them who may be specially concerned with the various problems under discussion. At the same time, I imagine that it may be necessary to ask the Prime Minister to take some part in the proceedings; this will be especially necessary if any of the Dominion Prime Ministers attend. But I should not anticipate that it would be necessary for him to do more than appear at one or two meetings, especially at the first and final meetings, unless any question of primary importance in inter-imperial relations should arise in the course of the discussions.

Finally, I would propose that the Inter-departmental Committee which has already devoted so much attention to the subject, and contains representatives of all the Departments interested, should be continued in being so that both its collective advice and that of individual members may be available as required; this procedure would have the further advantage that the members of the Committee would provide liaison between the principal representatives and the Departments. It would, I think, be of much advantage if the Attorney-General could assume the Chairmanship of this Committee, since, the problems involved being, as indicated above, primarily of a legal character, the main burden of conducting the Conference and representing the views of His Majesty's Government in the United Kingdom must, I think, inevitably fall on him.

I should be glad of an early decision on the points raised in this memorandum, both because it is desirable that Dominion Governments should be aware of our intentions as to representation as soon as possible (since the information may affect their own decisions) and also because, in view of the complexity of the questions at issue, those members of the Government who are to be the principal representatives of the United Kingdom should have a sufficiency of time in which to study the problems involved.

It will be necessary at a later date to circulate memoranda as to the main points of policy arising on which the instructions of the Cabinet will be necessary. The Inter-departmental Committee, to which I have already referred, have been at work on these points for some time, and have prepared their reports, which will shortly be available for circulation.

P.

Dominions Office, July 6, 1929.

APPENDIX I.

Despatch to [1] Canadian Government, [2] Commonwealth Government, [3] New Zealand Government, [4] Union Government, [5] Irish Free State Government, [6] Newfoundland Government (Dominions No. 601, Confidential).

Sir,

Downing Street, December 27, 1928.

WITH reference to the Prime Minister's message contained in my telegram Circular A, No 58, of the 16th November regarding the proposed Expert Committee on the Operation of Dominion Legislation and Sub-Conference on Merchant Shipping Legislation, I have the honour to transmit for the information of His Majesty's Government in [Canada], [the Commonwealth of Australia], [New Zealand], [the Union of South Africa], [the Irish Free State], [Newfoundland], copies of two preparatory memoranda† containing a survey of existing legislation, which have been drawn up with the object of assisting the work of the Expert Committee and Sub-Conference.

2. It will be seen that the survey includes references to Dominion legislation. These references have necessarily been based on the information available in this country.

I have, &c.

L. S. AMERY.

† Appendices II and III.

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APPENDIX *II*

Proposed Expert Committee
ON THE
Operation of Dominion Legislation.

**Preparatory Memorandum containing a Survey of
Existing Legislation passed by the Parliament at
Westminster which affects the Dominions.**

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Proposed Expert Committee

ON THE

Operation of Dominion Legislation.

**Preparatory Memorandum containing a Survey of
Existing Legislation passed by the Parliament at
Westminster which affects the Dominions.**

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INTRODUCTION.

1. The Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 recommended that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines :—

“To enquire into, report upon, and make recommendations concerning—

“(i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.

“(ii) (a) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.

(b) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion.

“(iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report.”

2. In order that material might be prepared for circulation to the Dominions before the meeting of the proposed Committee, a preliminary survey of the existing position has been made, and the existing legislation passed by the Parliament at Westminster which affects the Dominions has been examined in some detail.

3. Below will be found a list of the subjects with which it is thought that the proposed Committee will have to deal. Examination has shown that they may conveniently be grouped as follows :—

I. The Law relating to the Sovereign and the Royal Family.

II. Certain aspects of Imperial Defence.

(a) The Armed Forces of the Crown.

(b) The Law of Prize.

(c) The Foreign Enlistment Act.

III. Nationality.

IV. The Judicial Committee.

V. The Official Secrets Acts.

VI. Legislation relating to the removal of Criminals.

(a) The Fugitive Offenders Act.

(b) Extradition.

(c) Colonial Prisoners Removal Acts.

VII. Miscellaneous.

(a) Certain Acts relating to Evidence.

(b) Bankruptcy.

(c) Companies.

(d) Coinage.

(e) Industrial Property.

(f) Air Navigation.

VIII. Certain legislation of which the operative effect is mainly in relation to foreign territory.

- (a) Foreign Jurisdiction Acts.
- (b) Extra-territorial jurisdiction in respect of offences on land committed by British Subjects.
- (c) Statutory functions of British Consular Officers.

IX. Constituent and Federating Instruments (including the Colonial Boundaries Act, 1895). Reservation and Disallowance.

- (a) Provisions in Dominion Constitutions.
- (b) The Colonial Boundaries Act, 1895.
- (c) The Prerogative of Mercy.
- (d) The Colonial Stock Acts.

4. In the succeeding chapters an attempt has been made to set out the substance of the law and practice now relating to the subjects enumerated above; but no attempt has been made to examine the principles which underlie that body of law and practice. It is hoped that the resulting epitome of the existing situation may prove to be of assistance to His Majesty's Governments in the Dominions in preparing the ground for the Committee of Experts.

December, 1928.

CHAPTER I.

THE LAW RELATING TO THE SOVEREIGN AND THE ROYAL FAMILY.

A.—THE SUCCESSION TO THE CROWN.

1. The principal Act relating to the succession to the Crown at the present time is the Act of Settlement, 1700 (12 & 13 Will. III, c. 2). By this Act it was declared that the Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the late Queen of Bohemia, daughter of James I, was next in succession in the Protestant line to the Imperial Crown and dignity of the Realms of England, France, and Ireland, with the Dominions and Territories thereunto belonging after King William III and the Princess Anne of Denmark, and in default of issue of the said Princess Anne and of the King respectively; and that the Crown and legal government of the said Kingdom and the Dominions thereunto belonging should be, remain and continue, to the Princess Sophia and the heirs of her body being Protestants. By Section 2 it was enacted that all and every person and persons who should inherit the Crown by virtue of the limitations declared by the Act and who should be in communion with the See or Church of Rome or profess the Popish religion or become a Papist should be subject to the incapacity established by the Bill of Rights (1 Will. & Mary, Sess. 2, c. 2). Section 9 of the Bill of Rights excluded the persons mentioned for ever from the Crown, and absolved their subjects from their allegiance, and provided that the Crown should descend to the person who, being Protestant, would have inherited the same if the person so excluded were naturally dead.

2. By the Act of Union with Scotland, 1706 (6 Anne, c. 11), the succession to the Crown of the United Kingdom of Great Britain and of the Dominions thereto belonging was declared to be that enacted in the Act of Settlement. By the Act of Union with Ireland, 1800 (39 & 40 Geo. III, c. 67), the Kingdoms of Great Britain and Ireland were united into one Kingdom by the name of the United Kingdom of Great Britain and Ireland and similar provision was made for the succession to the Crown of the United Kingdom of Great Britain and Ireland and of the Dominions thereunto belonging. The legal position as to the succession to the Crown was unaffected by the Acts establishing the Irish Free State; but Section 4 of the Government of Ireland Act, 1920 (10 & 11 Geo. V, c. 67) expressly prohibits the Parliament of Northern Ireland from making laws in respect (*inter alia*) of the Crown or the succession to the Crown.

3. The only other Act which it appears necessary to mention is 1 Mary, Sess. 3, c. 1, which enacts that the kingly office of the realm and all dignities, prerogatives royal, powers, pre-eminences, privileges, authorities and jurisdictions, thereunto annexed, being invested either in male or female, are as fully, wholly, absolutely and entirely deemed, adjudged, accepted, invested and taken in the one as in the other, thus enabling the succession to pass in the female as well as in the male line.

B.—THE CORONATION OATH.

4. By 1 Will. & Mary, c. 6, it was provided that an oath in the prescribed form should be administered to every King or Queen who should succeed to the throne at their respective coronations by one of the Archbishops or Bishops of the realm to be thereunto appointed by such King or Queen respectively and in the presence of persons attending, assisting or otherwise present at the coronation. To the coronation oath was added a declaration against the doctrine of transubstantiation and other Romish doctrines according to the form set out in 30 Car. II, Stat. 2, c. 1, with a proviso that if the Sovereign at the date of his or her succession to the Crown was under the age of 12 years, the declaration should be made and subscribed at his or her coronation, or on the first day of the meeting of the first Parliament which should be held after he or she attained the age of 12 years.

5. By Section 2 of the Act of Settlement, 1700 (12 & 13 Will. III, c. 2), the earlier statutory provisions as to the coronation oath and the declaration against transubstantiation were re-enacted; but by the Accession Declaration Act, 1910 (10 Edw. VII & 1 Geo. V, c. 29), a modified form of declaration was substituted.

6. By the Act of Union with Scotland, 1706, it was further provided that every Sovereign should at his or her coronation take an oath to maintain the established Church of England and Scotland, respectively. By the Act of Union with Ireland, 1800, the established Churches of England and Ireland were united in one Protestant Episcopal Church called "The United Church of England and Ireland," and the oath required to be taken by the Sovereign at his or her coronation for maintaining the established Church of England accordingly applied thenceforward to the United Church of England and Ireland. The union of the two Churches was, however, dissolved by the Irish Church Act, 1869 (32 & 33 Vict., c. 42), and the Sovereign's oath, therefore, has, since that date, had reference to the Church of England alone. The Church of England has, since the Welsh Church Act, 1914 (4 & 5 Geo. V, c. 91), ceased to include the Church so far as it extends to and exists in Wales and Monmouthshire.

C.—REGENCY.

7. By the Lords Justices Act, 1837 (7 Will. IV & 1 Vic. c. 72), it was provided that, if at the demise of Her Majesty the next successor entitled to the Crown should be out of the realm, certain great officers of State should be constituted and appointed Lord Justices of the United Kingdom and empowered until such successor should arrive or otherwise determine their authority to exercise and execute all powers and acts of Government in as whole and ample manner as such next successor would be able to exercise or execute the same if he or she were present in person within the United Kingdom. Certain limitations were placed by the Act upon the power of the Lord Justices, and, in particular, they were forbidden to dissolve Parliament or to give the Royal Assent to any bill or bills for repealing, changing or in any respect varying the course of succession to the Crown as established by law. This Act appears still to be in force.

8. On the accession of King George V the heir apparent was still under the age of 18 years and provision for a Regency in the event of His Majesty dying before the heir to the Throne had attained his majority was accordingly made by the Regency Act, 1910 (10 Edw. VII & 1 Geo. V, c. 26). This Act provided that if any child of King George should succeed to the Crown while under the age of 18 years, Her Majesty Queen Mary should be the guardian and have the care and tuition of such child until the child attained the age of 18 years, and have full power and authority in the name of such child and under the style and title of "The Regent" to exercise and administer, according to the laws and constitution thereof, the rule, powers and government of the realm and of the dominions, countries and territories belonging to the Crown, and to use, exercise and perform all prerogatives, authorities and acts of government and administration of government that belong to the Sovereign of the realm. It was also specially provided by Section 4 of the Act (following the precedent of the Lords Justices Act) that the Regent should not give or have power to give the Royal Assent to any bill for repealing, changing or in any

respect varying the course of succession to the Crown as established by law, and further that if her Majesty Queen Mary should after becoming Regent be reconciled to or hold communion with the See or Church of Rome, or should profess the Roman Catholic religion or should marry a person professing the Roman Catholic religion, or should cease to reside in or absent herself otherwise than temporarily from the United Kingdom her powers and authorities as guardian of the Sovereign and Regent should thenceforth cease and determine.

D.—ROYAL TITLES.

9. The Royal style and titles have been declared by a number of Proclamations issued under the Great Seal by virtue of the express authority of an Act of Parliament. The principal Acts and Proclamations to which it is necessary to refer are as follows :—

10. Article 1 of the Articles of Great Britain and Ireland which were ratified and confirmed by the Act of Union with Ireland, 1800, declared that the Royal style and titles appertaining to the Imperial Crown of the United Kingdom of Great Britain and Ireland, and its Dependencies, should be such as His Majesty by Royal Proclamation under the Great Seal of the United Kingdom should be pleased to appoint ; and a Proclamation was accordingly issued on the 1st January, 1801, declaring that the Royal style and titles should henceforth be " George III by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith." By the Royal Titles Act, 1876 (39 & 40 Vic. c. 10), Her Majesty was empowered, with a view to the recognition of the transfer of the Government of India from the East India Company to Her Majesty by the Government of India Act, 1858, to make such addition to the style and titles at that time appertaining to the Imperial Crown of the United Kingdom and its Dependencies as to Her Majesty might seem meet ; and a Royal Proclamation issued on 28th April, 1876, declared that henceforth the words " Empress of India " should be added to the Royal style and titles. The Royal Titles Act, 1901 (1 Edw. VII, c. 15), further empowered His Majesty, with a view to the recognition of His Majesty's Dominions beyond the Seas by Royal Proclamation issued within six months after the passing of the Act, to make further additions to the Royal style and titles ; and a Proclamation issued on the 4th November, 1901, added after the words " the United Kingdom of Great Britain and Ireland " the words " and of the British Dominions beyond the Seas." Section 1 of the Royal and Parliamentary Titles Act, 1927 (17 & 18 Geo. V, c. 4), authorised the making within six months after the passing of the Act of such alterations as to His Majesty might seem fit ; and a Proclamation issued on the 13th May, 1927, substituted for " the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas " the phrase " Great Britain, Ireland and the British Dominions beyond the Seas."

11. The Proclamation of 17th July, 1917, declaring that the Royal house and Family should be styled and known thenceforth as " the House and Family of Windsor," and relinquishing all German titles, dignities and honours, did not require the authority of an Act of Parliament and was not in fact made in pursuance of any Act.

E.—ROYAL MARRIAGES.

12. By Section 1 of the Royal Marriages Act, 1772 (12 Geo. III, c. 11) it was enacted that no descendant of the body of King George II, male or female, other than the issue of Princesses who had married or might thereafter marry into foreign families, should be capable of contracting matrimony without the previous consent of the Crown signified under the Great Seal declared in Council, and that every marriage or matrimonial contract of any such descendant without such consent should be null and void to all intents and purpose whatsoever. By Section 2 a descendant of the body of George II being over the age of 25 years may, upon giving notice to the Privy Council, contract a marriage without the Royal assent at any time after the expiration of twelve calendar months after such notice and the marriage is valid unless both Houses of Parliament shall before the expiration of the twelve months expressly declare their disapprobation of it. Subsequent general

legislation relating to marriages has always contained a saving Clause with regard to this Act (*see* Marriage Act, 1823 (4 Geo. IV, c. 76), section 30; Marriage Act, 1836 (6 & 7 Will. IV, c. 85), section 45, and Foreign Marriages Act, 1892 (55 & 56 Vic. c. 23), section 23). The Act applies to all marriages which fall within its scope, whether they are celebrated in the United Kingdom or in any other country; *Sussex Peerage Case*, 1844, 1 Cl. & F. 85.

F.—THE OTHER MEMBERS OF THE ROYAL FAMILY.

13. For all practical purposes (save in the case of certain treasons referred to below), the members of the Royal Family other than the Sovereign are in the same position as other subjects of the Crown and enjoy no special privileges. An Act of Henry VIII (32 Hen. VIII, c. 51), however, enables the Queen Consort to sue in all cases as a feme-sole in her own christian name and with the addition of "Queen of England and of France and Lady of Ireland"; but in an early edition of *Chitty on Pleading*, cited by Robertson, *Civil Proceedings by and against the Crown*, p. 6, it is stated she should sue and be sued as "Her Most Sacred Majesty Queen ———, Consort of Our Sovereign Lord the now King." The Heir Apparent Establishment Act, 1795 (35 Geo. III, c. 125), enacts a curious procedure for the purpose of recovering debts owed by the Heir Apparent. By Section 8 of the Act no action may be brought against the Heir Apparent himself, but against his Treasurer or other principal officer or officers to whom the particulars of the claim have been previously delivered in accordance with the provisions of the Act. Judgment is to be a charge against the funds of the Heir Apparent in the defendant's hands, and execution is not to issue against the defendant or his property. It would appear that, strictly speaking, the procedure laid down by the Act applies equally whether the debts are contracted in the United Kingdom or in one of the Dominions.

G.—TREASON.

14. Apart from the crime of treason in what may be called its political aspect, there are certain offences against the person of the Sovereign and of other members of the Royal Family which are treason, treason felonies, or misdemeanours. By the Treason Act, 1351 (25 Ed. III, Stat. 5, c. 2) as extended by the Treason Act, 1795 (36 Geo. III, c. 7), it is treason for any person either within the realm or without to compass, imagine, invent, devise or intend death or destruction or any bodily harm tending to death or destruction, maiming or wounding, imprisonment or restraint of the person of the Sovereign; or to compass or imagine the death of the King's wife during the life of the King, or of his eldest son and heir, or to violate the King's wife during his lifetime, or the King's eldest daughter being unmarried, or the wife of the King's eldest son and heir during coverture.

15. By the Treason Act, 1702 (1 Anne, Stat. 2, c. 21), it is treason to endeavour to deprive or hinder whoever shall be next in succession to the Crown at the time being according to the limitations established by law from succeeding after the death of the Sovereign to the Crown, or maliciously, advisedly and directly by writing or printing to maintain and affirm that any other person or persons has or have any right or title to the Crown otherwise than according to the Acts relating thereto. By the Treason Felony Act, 1848 (11 & 12 Vic. c. 12), it is felony for any person within the realm or without to compass, imagine, invent, devise or intend to deprive or depose the Sovereign from the style, honours or Royal name of the Imperial Crown of the United Kingdom or any other of His Majesty's Dominions and countries. By the Treason Act, 1842 (5 & 6 Vic. c. 51), it is a high misdemeanour punishable with various terms of penal servitude or imprisonment to discharge or aim fire-arms at or near to the person of the Sovereign, or to strike or strike at him with any offensive weapon or in any other manner with intent to injure or alarm him.

H.—THE PRIVATE ESTATES OF THE CROWN.

16. The private estates of the Sovereign as distinguished from the estates which he holds as Sovereign are dealt with in the Crown Private Estates Act, 1862 (25 & 26 Vic. c. 37), and the Crown Private Estates Act, 1873 (36 & 37 Vic. c. 61). The private estates of the Crown are defined by the Acts as meaning any lands

and hereditaments or other real or heritable property, whether situate or arising in England, Scotland or Ireland, or any other part of the Dominions of the Crown, which have at any time been purchased or acquired by the Sovereign out of any moneys issued for the use of the Privy Purse or with any other moneys not appropriated for any public service, or which shall have come to the Sovereign by gift or devise, or by descent, inheritance or succession, or otherwise. Generally speaking, the purpose of the Acts is to assimilate the position of the Sovereign so far as regards his private estates to that of a private individual; but the Acts provide that in respect of any private estates of the Crown not vested in Trustees wherever situate all suits and actions may be brought or defended on behalf of the Sovereign by and in the name or names of any person or persons to be from time to time for that purpose appointed by the Sovereign under the Sign Manual. Section 3 of the later Act further provides that any suit, action or other proceeding in any part of the Dominions of the Crown relating to any debt or liability to or any claim or demand by the Sovereign in right or respect of his Privy Purse, or of any personal estate or effects subject to disposition by his last will and testament, may be issued, brought, prosecuted or taken on behalf of the Sovereign, his heirs and successors, by and in the name or names of any person or persons appointed in the manner described above. It would seem that the provisions of this section (which, it will be observed, includes proceedings relating to the personal estate or effects of the Sovereign) only refer to claims on behalf of the Sovereign and not to claims against him; but that the general provisions of the two Acts, so far as regards the claims relating to the Sovereign's real property, apply equally to claims by or against the Sovereign.

CHAPTER II.

CERTAIN ASPECTS OF IMPERIAL DEFENCE.

- (1) THE ARMED FORCES OF THE CROWN.
- (2) THE LAW OF PRIZE.
- (3) THE FOREIGN ENLISTMENT ACT.

(1)—The Armed Forces of the Crown.

1. As the law now stands the Codes governing the Armed Forces of the Crown raised under the authority of the Parliament at Westminster fall into two main classes, those applicable to the Navy on the one hand, and those applicable to the Army and the Air Force on the other.

NAVAL FORCES.

2. The main statute regulating Naval Forces is the Naval Discipline Act. The Naval Discipline (Dominion Naval Forces) Act, 1911 (1 & 2 Geo. V, c. 47), provides that where a self-governing Dominion has made provision for the application to its Naval Forces of the Naval Discipline Act that Act shall have effect as if references therein to His Majesty's Navy and His Majesty's Ships included the Forces and ships raised by the Dominion, subject to such modifications as might be made by the Dominion.

Perhaps the chief legal features that require to be noted are the following:—

- (a) The Naval Discipline Act, if duly applied by the Dominion Legislature to the Naval Forces raised by the Dominion, in accordance with the Naval Discipline (Dominion Forces) Act, 1911, creates a system of naval discipline for the Naval Forces of such Dominion which is enforceable either within or without the territorial limits of such Dominion.
- (b) In a Dominion which has duly applied the Naval Discipline Act, an order to a member of the Dominion Naval Forces to proceed to a ship or establishment of the Royal Navy would be a lawful exercise of such naval discipline, and a lawful order which he would be bound to obey. A person disobeying such an order whether within or without the territorial limits of the Dominion would be committing an offence against the Naval Discipline Act as applied by the local Legislature, and could be proceeded against accordingly.
- (c) If a person so ordered should, in fact, proceed on board one of the ships of the Royal Navy in commission, he would be amenable to the Naval Discipline Act unmodified under Section 87 of that Act.
- (d) If Dominion Naval Forces should be placed by a Dominion Government at the disposal of the Admiralty, the Act of 1911 provides that while so serving they are subject to the Naval Discipline Act unmodified.
- (e) Recently the Naval Discipline Act, 1922 (12 & 13 Geo. V, c. 37), provided *inter alia* that officers and men of the Royal Navy who were serving by order of the Admiralty in Dominion ships should, whilst so serving, be subject to the laws and regulations applicable to the Naval Forces of the Dominions.

In the Acts of 1911 and 1922 the phrase "self-governing Dominions" is defined as including the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand and the Union of South Africa and Newfoundland.

Naval Forces for general service on the high seas have, in fact, been established by Australia, Canada and New Zealand under local legislation based on the Imperial Act of 1911.

3. Previously to the Naval Discipline (Dominion Naval Forces) Act, 1911, which followed discussions at the Imperial Conference of 1911, and the arrangements then made regarding certain Dominion Navies and co-operation between the ships of the Royal Navy and of the Dominion Navies, the Colonial Naval Defence Act, 1865 (28 & 29 Vic. c. 14), was the main Imperial Act affecting the Naval Forces of a British Possession. That Act made possible, by means of offer and acceptance, to which effect is given by Order in Council, that Forces established in British Possessions should come under Imperial control in any case of the undertaking of operations outside the limits of the Possession, and it made provision for disciplinary powers outside the limits of Colonial territorial waters. The Act was directed to the establishment of a local Naval Force which may include :—

- (1) War vessels.
- (2) Seamen and others for permanent service in such vessels or, in emergency, in the Royal Navy.
- (3) Volunteers of the nature of the Royal Naval Reserve for service in such vessels, or, in emergency, in the Royal Navy.

The Volunteers are nominally part of the Royal Naval Reserve, but, except as provided in the Colonial Naval Defence Act itself, are subject exclusively to the provisions made by the legislative authority of the Colony as permitted by the Act, but the disciplinary code of the Royal Navy must be applied to the force while outside those limits.

Under the Colonial Defence Act, 1909 (9 Edw. VII, c. 19), the force raised by any Colony may, if the Colony so prefers, form a part of the R.N.V.R. raised under the Naval Forces Act, 1903 (3 Edw. VII, c. 6).

In 1908 the Governments of the Cape of Good Hope and Natal passed the necessary legislation to establish in each colony a Division of the R.N.V.R. and the Union of South Africa continued the R.N.V.R. system and based their arrangements in 1912 as to the South African Division of the R.N.V.R. on the Acts of 1865, 1903, and 1909 (Section 22 of the Union of South Africa Defence Act, 1912).

Newfoundland also established a R.N.R. (now disbanded) at the beginning of the century, in pursuance of the Act of 1865.

4. The Irish Free State has no naval forces at present: certain Articles of the Articles of Agreement bear on the position in the Irish Free State in the matter of Naval Defence.

5. There are certain other Statutes affecting the discipline and organization of the Royal Navy and their relations in certain respects with the civil population and civil power throughout H.M. dominions, such as the Naval Deserters Act, 1847 (10 & 11 Vic. c. 62), and it may also be useful to refer to certain activities of H.M. ships which have been authorised by Statute (*see* Appendix) in order, mainly, to implement international obligations or secure on the high seas the compliance of British subjects with Imperial Acts.

MILITARY AND AIR FORCES.

6. *Regular Forces.*—The main statute regulating the Army is the Army Act, which lays down a code of discipline, a disciplinary procedure code, provisions dealing with such matters as enlistment, offences in relation to the forces, imprisonment and the relations between military and civil jurisdictions, together with a series of provisions designed to regulate the mutual relations of the members of all the forces of the Crown when acting together or attached from one force to another. The Royal Air Force was created by the Air Force (Constitution) Act, 1917 (7 & 8 Geo. V, c. 51), which applied the Army Act to that Force

with certain modifications and provided that as so modified it should take effect as a separate Act of Parliament under the short title of the Air Force Act. The differences between the Air Force Act and the Army Act are not of so substantial a character as to require further reference here.

7. *Reserve and Territorial Forces.*—Broadly speaking, when the non-regular military forces are under training or on service the code of discipline contained in the Army Act applies to them. Their administration, conditions of service and enlistment are provided for in the Reserve Forces Acts, 1882–1906, and the Territorial and Reserve Forces Act, 1907 (7 Edw. VII, c. 9), and the Territorial Army and Militia Act, 1921 (11 & 12 Geo. V, c. 37). The Reserve Forces Act, 1906 (6 Edw. VII, c. 11), provides that men of the Reserve may be authorised to reside in any part of His Majesty's dominions and makes the Reserve Forces Acts applicable to them when so resident. It also authorises enlistment in the Reserve to take place in any part of His Majesty's dominions "except in a Colony possessing responsible government," these "Colonies" being given in the Schedule to the Act, as amended by the Order in Council of 5th May, 1908, and applied to the Union of South Africa by the South Africa Act, 1909, as The Dominion of Canada, The Commonwealth of Australia, New Zealand, Union of South Africa, Newfoundland.

All these statutes, save the Territorial Army and Militia Act, 1921, have been applied with modifications to the non-regular air forces under the provisions of the Air Force (Constitution) Act, 1917, and the Auxiliary Air Force and Air Force Reserve Act, 1924 (14 & 15 Geo. V, c. 15), and the position of these forces does not differ in any substantial degree from the position of the non-regular military forces.

8. *Dominion Forces.*—Dominion Military and Air Forces are constituted under various Dominion enactments: in the case of the Irish Free State Article 8 of the Articles of Agreement bears on the question. Under Sections 177 of the Army and Air Force Acts the code of discipline laid down by a Dominion Government for its own Military and Air Forces is made effective when those forces are outside the Dominion, and there is provision for adoption by the Dominion Government, should it so desire, of the Army and Air Force Acts with such modifications as the special conditions of its forces require.

At present Australia, Canada and New Zealand have applied the Army Act, in whole or in part, to their forces; South Africa has a Union Military Discipline Code, which is a modified form of the Army Act; the Irish Free State forces are governed by the Defence Forces (Temporary Provisions) Acts, 1923–1927.

Newfoundland has no Military or Air Forces.

APPENDIX REFERRED TO IN PARAGRAPH 5.

- Slave Trade Act, 1824 (5 Geo. IV, c. 113).
 - Slave Trade Act, 1843 (6 & 7 Vic. c. 98).
 - Slave Trade (Consolidation) Act, 1873 (36 & 37 Vic. c. 88).
 - Slave Trade Act, 1876 (39 & 40 Vic. c. 46).
 - Slave Trade (East African Courts) Act, 1873 (36 & 37 Vic. c. 59).
 - Slave Trade (East African Courts) Act, 1879 (42 & 43 Vic. c. 38).
 - Chinese Passengers' Act, 1855 (18 & 19 Vic. c. 104).
 - Pacific Islanders' Protection Act, 1872 (35 & 36 Vic. c. 19).
 - Pacific Islanders' Protection Act, 1875 (38 & 39 Vic. c. 51).
 - Foreign Enlistment Act, 1870 (33 & 34 Vic. c. 90).
 - Piracy Act, 1850 (13 & 14 Vic. c. 26).
 - Behring Sea Award Act, 1894 (57 Vic. c. 2).
 - Submarine Telegraph Act, 1885 (48 & 49 Vic. c. 40).
 - Merchant Shipping Act, 1894–1920.
 - Sea Fisheries Act, 1868 (31 & 32 Vic. c. 45).
 - Sea Fisheries Act, 1875 (38 & 39 Vic. c. 15).
 - Sea Fisheries Act, 1883 (46 & 47 Vic. c. 22).
 - Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vic. c. 21).
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(2)—The Law of Prize.

1. The right of prize is a right of a belligerent, recognised by international law, to seize in certain circumstances enemy or neutral property actually or constructively at sea, and to ask for its condemnation by a Prize Court (*Palm Branch*, 1919, A.C. at p. 277). The function of a Prize Court is to ensure that no seizure is made in circumstances not justified by international law, and it has the power of awarding damages to persons injured by the wrongful seizure of their property. In this way a British Prize Court has the duty and power of supervising and regulating an essential part of the activities of the Royal Navy in time of war.

Thus, the right of prize and the manner in which it is to be exercised in time of war is an important and indeed essential element in the Naval Defence of the Empire.

2. The manner in which jurisdiction is conferred on Prize Courts in the Dominions and the law which those Courts administer are dealt with in Imperial Statutes which deal essentially with two matters, the setting up of Courts having jurisdiction in prize and the nature of the law to be administered by those Courts.

3. With the possible exception of the High Court in England, to which further reference is made hereafter, jurisdiction in prize is conferred by Royal Commission followed by Admiralty Warrant. Before 1864, the creation of Prize Courts was a purely prerogative power, but it is now regulated by a number of Statutes which will now be considered.

4. Throughout His Majesty's dominions, prize jurisdiction is exercised by Courts having jurisdiction in Admiralty, and in order to obtain a comprehensive view of the matter it is necessary to consider separately the manner in which Courts having Admiralty jurisdiction can be created in His Majesty's dominions and the circumstances in which those Courts can exercise jurisdiction in prize.

The Courts in question are :—

- (a) The High Court in England (in which is now vested the jurisdiction of the High Court of Admiralty) ;
- (b) Colonial Courts of Admiralty ;
- (c) Vice-Admiralty Courts.

5. By Section 23 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V, c. 49), which consolidated without amendment the then existing law, the High Court (that is, the High Court in England) is declared to be a Prize Court within the meaning of the Naval Prize Acts, 1864–1916, and is given jurisdiction on the high seas and throughout His Majesty's dominions. There is considerable difference of opinion whether this jurisdiction is permanent or whether a commission from His Majesty is necessary before it can be exercised. In the late war a number of commissions were in fact issued to the Court.

6. The Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27), Section 2, provides :—

- “(a) that every Court of Law in a British Possession which is for the time being declared in pursuance of that Act to be a Court of Admiralty, or which, if no such declaration is in force in the Possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty with the jurisdiction therein mentioned and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its civil jurisdiction.
- “(b) The jurisdiction of such a Court shall, subject to the provisions of the Act, be the same as the Admiralty jurisdiction of the High Court in England, and further, that it shall have the same regard as that Court to international law and the comity of nations.
- “(c) Any reference in an Imperial Act to a Vice-Admiralty Court shall include a reference to a Colonial Court of Admiralty, provided [*inter alia*] that no Colonial Court of Admiralty can by virtue of this Act, exercise any jurisdiction under the Naval Prize Act, 1864, or otherwise in relation to Prize.”

Section 3 empowers the Legislature of any British Possession to declare any Court of unlimited civil jurisdiction (whether original or appellate) in that Possession to be a Colonial Court of Admiralty; but under Section 4 all such local Acts must, unless previously approved by a Secretary of State, either be reserved for His Majesty's assent or contain a suspending clause.

Section 9 gives power to His Majesty by commission under the Great Seal to authorise the Admiralty to establish in a British Possession any Vice-Admiralty Court or Courts. Upon the establishment of such a Court the Admiralty may appoint the Judge and other officers of the Court. Provided that a Court established under this Section shall not in a Possession having a representative Legislature exercise any jurisdiction except for some purpose relating to prize or to His Majesty's Navy, the slave trade, or in relation to matters dealt with by the Foreign Enlistment Act, 1870 (33 & 34 Vic. c. 90), or the Pacific Islanders' Protection Acts, 1872 & 1875 (35 & 36 Vic. c. 19 and 38 & 39 Vic. c. 51), or to matters in which questions arise relating to treaties or conventions with foreign countries or the international law. His Majesty may by commission under the Great Seal direct the Admiralty to abolish a Vice-Admiralty Court established under the Section.

Section 10 continues the power to appoint a Vice-Admiral in any British Possession, but in the absence of other formal appointment the Governor is *ex officio* the Vice-Admiral.

Section 17 abolishes, with certain exceptions, Vice-Admiralty Courts then existing.

7. The Naval Prize Act, 1864 (27 & 28 Vic. c. 25), provides as follows:—

"Section 3.—The High Court of Admiralty and every Court of Admiralty or of Vice-Admiralty or other Court exercising Admiralty jurisdiction in His Majesty's dominions for the time being authorised to take cognizance of and judicially proceed in matters of prize shall be a Prize Court within the meaning of the Act.

"Section 4.—The High Court of Admiralty shall have jurisdiction throughout His Majesty's dominions as a Prize Court with power to enforce any order or decree of the Judicial Committee of the Privy Council in a Prize Appeal."

Section 5 provides that there shall be an appeal to His Majesty in Council from any order or decree of a Prize Court.

Section 9 provides that every Vice-Admiralty Court shall enforce within its jurisdiction all orders and decrees of the Judicial Committee and of the High Court of Admiralty in prize causes.

By Section 10 His Majesty in Council may grant a salary to the Judge of any Vice-Admiralty Court. This Section was amended by the Prize Courts Act, 1915 (5 & 6 Geo. V, c. 57), which, as regards Prize Courts in the Dominions, provided that the power to grant a salary should not in such cases be used except on the application of the Governor-General, or the Governor-in-Council, as the case might be.

8. The Prize Court Act, 1894 (57 & 58 Vic. c. 39), provides:—

"Section 1.—Any commission warrant or instructions from His Majesty or from the Admiralty for the purpose of commissioning or regulating the procedure of a Prize Court at any place in a British Possession, may, notwithstanding the existence of peace, be issued at any time with a direction that the Court shall act only upon a proclamation being made by the Vice-Admiral on his being satisfied by information from a Secretary of State or otherwise that war has broken out between His Majesty and a foreign State. The commission or warrant may authorise either a Vice-Admiralty Court or a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, to act as a Prize Court, and may establish a Vice-Admiralty Court for the purpose.

"Any such commission warrant or instructions may be revoked or altered from time to time."

9. The position as regards Prize Courts in the Empire is therefore as follows :—

- (a) The High Court in England has jurisdiction in prize (whether or no a commission is necessary) throughout His Majesty's dominions ;
- (b) Any Court of original unlimited civil jurisdiction in a British Possession is a Colonial Court of Admiralty having jurisdiction in Admiralty matters. Colonial Courts of Admiralty can also be set up by a Dominion or Colonial Legislature, though the Acts establishing them must be reserved or contain suspending clauses ;
- (c) The Admiralty may, if authorised by commission under the Great Seal, set up Vice-Admiralty Courts having jurisdiction in prize ;
- (d) A Colonial Court of Admiralty or Vice-Admiralty Court can only exercise jurisdiction in prize by virtue of a commission from His Majesty followed by a warrant from the Admiralty, which may be revoked at any time. The practice is that such commission or warrant defines the territorial limits within which that jurisdiction is to be exercised ;
- (e) There is an appeal from any Prize Court to the Privy Council and all Prize Courts must enforce the orders and decrees of the Judicial Committee.

10. Under the Naval Prize Court Acts, 1915 and 1916 (5 & 6 Geo. V, c. 57 and 6 & 7 Geo. V, c. 2), any Prize Court in which any prize proceedings are pending may remit the proceedings in whole or in part to some other Prize Court.

11. A Dominion Court therefore exercises jurisdiction in prize by virtue of a Royal Commission which, as the power of issuing such commission is a branch of the prerogative which has not been delegated to the Dominion executives, has been issued on the advice of Ministers in the United Kingdom.

12. The nature of the law administered by a Prize Court and the extent to which such a Court is bound to give effect to Acts of Parliament and to Orders in Council was discussed by the Privy Council in the case of the "Zamora" (1916, A.C. 77) when the following principles were laid down :—

The law which a Prize Court administers is international law and the Court is not bound by Orders in Council purporting to prescribe or alter that law. It is, however, bound by the legislative enactments of its own sovereign State, but if an Act were passed containing provisions inconsistent with international law the Prize Court would, it was pointed out, in giving effect thereto no longer be administering international law and, in the field covered by such provisions, would be deprived of its proper function as a Prize Court.

It was further pointed out that it did not follow that, because Orders in Council could not prescribe or alter the law to be administered by a Prize Court, a Prize Court would ignore Orders in Council altogether. The Privy Council proceeded to give instances of cases in which a Prize Court would give effect, in a greater or less degree, to Orders in Council. Orders in Council having for their object a mitigation of Crown rights in favour of the enemy or neutrals would, it is stated, be acted upon by a Prize Court. An Order declaring a blockade would be regarded as, *prima facie*, justifying the capture and condemnation of vessels attempting to enter a blockaded port but would not preclude evidence to show that the blockade was ineffective and therefore unlawful. An Order authorising reprisals would be conclusive of the facts recited as showing that a case for reprisals existed and would have weight as showing what, in the opinion of the executive, were the best means of meeting the emergency, but would not preclude the right of any party aggrieved to contend that those means were unlawful because entailing on neutrals a degree of inconvenience which, having regard to all the circumstances of the case, was unreasonable. It was further declared that any Order in Council which was acquiesced in and was not declared by a Prize Court to be illegal would be evidence by which, in process of time, international law and usage might be established.

13. It will be seen, therefore, that Orders in Council have a legitimate though limited place in the code of law administered by a Prize Court, and that a Prize Court would be bound to apply any Statute dealing with that law.

14. Prize Court procedure also occupies an important place in the system. For example, before the Naval Prize Rules were amended shortly before the war, the evidence of ships' papers alone was admissible for the purpose of condemnation, unless the Court otherwise ordered; but the amended rules made admissible evidence of any kind from which enemy property or enemy destination, as the case might be, could properly be inferred. Full advantage of this change was taken during the war. Prize rules of procedure are made by Order in Council under statutory authority.

15. Uniformity in all these matters has been obtained by reason of the fact that owing to the Colonial Laws Validity Act no Dominion Legislature can pass legislation conflicting with the Naval Prize Acts, and the further fact that Dominion Prize Courts have operated under Commissions conferred by the Imperial executive. Consequently, uniform regard has been paid to Orders in Council issued by that executive by the High Court in the United Kingdom and by Dominion Prize Courts.

16. Questions concerning the distribution of the proceeds of prize are possibly outside the scope of this memorandum, but the matter is dealt with in certain Imperial statutes to which attention may be drawn.

17. By Section 8 of the Colonial Courts of Admiralty Act, 1890, it is declared that nothing in that Act shall alter the application of any droits of Admiralty or droits of or forfeiture to the Crown in a British Possession. Such droits and forfeitures are, save as otherwise provided by any other Act, to be accounted for to the Treasury and be dealt with in such manner as the Treasury may direct. It is further provided that His Majesty in Council may by Order direct that subject to any specified conditions the said droits and forfeitures condemned by a Court in a British Possession shall form part of the revenue of that Possession either for ever or for such limited term as may be specified.

18. The distinction between droits of Admiralty (which belong to the Exchequer) and droits of the Crown (which belong to the Crown, but under grant by the Crown may pass to the captors) originally lay in this, that, broadly speaking, droits of Admiralty were the proceeds of ships or goods seized in a British port, creek or roadstead, and droits of the Crown were the proceeds of ships or goods seized at sea.

19. The Naval Prize Act, 1918 (8 & 9 Geo. V, c. 30), authorised His Majesty to signify by proclamation His intention to make grants of prize out of the proceeds of the droits of the Crown arising during the late war and set up a tribunal to determine whether in a particular case proceeds of a captured vessel or cargo were droits of Admiralty or droits of the Crown. The practice adopted by this tribunal was such that it is no longer possible to rest the distinction between the two classes mainly on the question whether the thing seized was seized in port or on the high seas. It may be observed that under modern conditions it is frequently a difficult matter to decide where seizure should be regarded as having taken place, and accordingly a working rule was adopted that under the actual grant made in pursuance of the Naval Prize Act, 1918, the Naval Prize Fund should be credited with the proceeds of all seizures which could be attributed to the existence of the Naval Forces.

20. After the late war the matter was dealt with apparently on the assumption that the droits were still at the disposal of the Crown. The proceeds of droits of the Crown were credited to the Naval Prize Fund and the personnel of the Dominion Fleets shared in the distribution of the Fund. Questions as to the disposal of the proceeds of droits of Admiralty were the subject of discussion between the Dominions and the Imperial Government. The arrangement ultimately made is embodied in a Treasury minute dated the 21st June, 1926. Shortly, this arrangement gave an option to the Dominions to elect either (a) that the rights and

liabilities arising from seizure should attach to His Majesty's Government in Great Britain or (b) that subject to certain conditions therein specified, of which one was that the Dominion should assume all liabilities attaching to the seizure, rights in respect of prizes not adjudged to the Naval Prize Fund which were condemned in a Dominion Prize Court should be transferred to the Dominion.

New Zealand and Newfoundland stated that they were not concerned in the matter. Canada and South Africa elected in favour of course (a) with, in the case of South Africa, certain modifications. Australia and India (which was included in the arrangement) elected in favour of course (b), and Orders in Council were issued accordingly.

(3)—The Foreign Enlistment Act, 1870.

1. The Foreign Enlistment Act (33 & 34 Vic. c. 90) extends (Section 2) "to all the dominions of His Majesty including the adjacent territorial waters." It provides the necessary powers and machinery to enable His Majesty to fulfil certain obligations which attach to him under international law, especially in time of war when His Majesty is neutral. For instance, the Act prescribes penalties on any British subject who, without the licence of His Majesty (1) enlists in the service of a foreign state at war with a state with which His Majesty is at peace, or (2) leaves British territory intending to enlist in such service, or (3) participates in the transportation of illegally enlisted persons. It also penalises the constructing, commissioning, equipping or dispatching of ships intended to be employed in the service of a state at war with a friendly state.

2. One section is of general application in that it is not limited to times when His Majesty is neutral. It prescribes penalties on persons in British territory fitting out naval or military expeditions to proceed against the dominions of a friendly state.

CHAPTER III.

- (1) **THE LAW OF NATIONALITY.**
- (2) **NATIONALITY OF MARRIED WOMEN.**
- (3) **DISABILITIES TO WHICH A BRITISH WOMAN BECOMES SUBJECT IN THE UNITED KINGDOM ON MARRIAGE WITH AN ALIEN.**
- (4) **PENSION AND FRANCHISE RIGHTS IN THE DOMINIONS OF A BRITISH WOMAN MARRYING AN ALIEN.**

(1)—**The Law of Nationality.**

It is the object of this Chapter to indicate :—

- I. The present state of Dominion legislation on the subject of British nationality and naturalization with special reference to the re-enactment—in some instances with textual variations—of Parts I and III of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. V, c. 17).
- II. The present state of Dominion legislation on the subject of local citizenship.

NATIONALITY AND NATURALIZATION.

Preliminary Note.

Before 1914 the law as to the acquisition of British nationality at birth was governed mainly by (1) the common law rule by which every person born within His Majesty's allegiance became at birth a natural born British subject ; and (2) the British Nationality Act, 1730 (4 Geo. II, c. 21), under which a person born abroad became at birth a natural born British subject if his or her father was by the common law a natural born British subject, and (3) the British Nationality Act, 1772 (13 Geo. III, c. 21), which conferred British nationality upon the child born abroad of a father who was a British subject by virtue of the Act of 1730. The British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. V, c. 17), which came into force on 1st January, 1915, consolidated and amended the law and repealed the above-mentioned Acts. The law relating to the acquisition of British nationality at birth now consists in the definition of natural born British subject as set out in Part I, Section 1, of the Act of 1914 as amended by the Acts of 1918 and 1922 : but the definition does not, except as otherwise expressly provided in the section, affect the status of any person born before 1st January, 1915.

Part III of that Act contains the provisions which govern the loss of British nationality and the national status of married women and infant children.

The Act of 1914 also repealed the Naturalization Act of 1870 under which certificates of naturalization had been granted in the United Kingdom, and in Part II made provision for the grant of certificates of Imperial naturalization in all parts of His Majesty's dominions subject, in the case of each of the then existing Dominions, to the adoption of Part II by the legislature of the Dominion.

The Act of 1914 had been prepared in consultation with the Governments of the Dominions and was passed with their concurrence after discussion at successive Imperial Conferences. It was generally contemplated that Parts I and III would extend to all those Dominions without re-enactment by the Dominion legislatures, and would be the only general enactment of the principles and rules governing British nationality. It was further contemplated that as regards naturalization (Part II of the Act) each Dominion would in pursuance of the power given by Section 9 of the Act adopt that Part by a simple statutory enactment. As will be seen from the following particulars effect has been given to the original scheme of the Act of 1914 in a way not foreseen when that scheme was approved by the Imperial Conference of 1911.

(A)—Canada.

1. The Dominion Government did not adopt Part II of the Imperial Act in the manner contemplated by Section 9, and did not leave Parts I and III to operate *proprio vigore* in the Dominion. They preferred to re-enact, with certain slight variations, the whole of the Imperial Act by the Canadian Naturalization Act, 1914 (4 & 5 Geo. V, c. 44). This Canadian Act was repealed by the Canadian Naturalization Act, 1919, but was revived in 1920 by the Naturalization Act of that year (10 & 11 Geo. V, c. 59). The latter Act has been followed by the Canadian Act of 1923, in which the provisions of the Imperial Amending Act of 1922 were re-enacted without textual variation. In the result Parts I and III of the Imperial Act as amended are reproduced in Canada with unimportant textual variations, and it is unnecessary to state here precisely what those variations are since they have not in fact caused, and are unlikely to cause, any practical difficulty.

2. It is to be noted, however, that one curious effect of the re-enactment of Part II of the Imperial Act by the Canadian Act of 1914 is that Section 8 of the latter Act purports to confer on the Government of the United Kingdom and the Government of any British Possession a power to grant certificates of Imperial naturalization similar to the power possessed by the Canadian Government under the Canadian Act.

3. The question was raised whether the re-enactment of Part II of the Imperial Act was equivalent to such an "adoption" of that part as was contemplated by Section 9 of that Act. His Majesty's Government in Great Britain were, however, advised that, in view of the fact that in an amending Act passed later in 1914 (5 Geo. V, c. 7) the Canadian Parliament had declared in the Preamble that by the earlier Act the Dominion of Canada had adopted Part II of the Imperial Act, the course taken by Canada might be regarded as an effective adoption, and no Dominion which has adopted Part II subsequently has, so far as is known, declined to recognise as British subjects persons to whom certificates of Imperial naturalization have been granted in Canada.

4. It may be added that since 1914 Canada has consistently maintained the principle that the provisions of its own Act relating to British nationality and naturalization must conform with those of the Imperial Act and of any amendments of the Imperial Act, and the Canadian Legislature has even gone so far as to repeal (on the ground that there was no such provision in the Imperial Act) a certain provision giving power to naturalize married women which found its way into the Canadian Naturalization Act, 1919.

5. The present attitude of the Canadian Government with regard to the uniformity of Imperial Nationality Law may be illustrated by a recent speech by the Hon. Fernand Rinfret, Secretary of State of Canada (Canadian Commons Debates, No. 67, 6th April, 1927), of which the following is an extract:—

"The House will appreciate the fact that the Naturalization Act in Canada is based upon the Imperial Act, and that it would not be wise to amend it in any way of our own accord without taking into consideration the effects of such an amendment within the Empire."

"The existing Act in Canada is the result of what may be called a contract entered into between Great Britain and the Dominions at the Imperial Conference of 1911. I will not give the full agreement, but will mention only the most important points, one being that Imperial Nationality should be world-wide and uniform, and the other that the Imperial Act should be so framed as to permit the self-governing Dominions to adopt it."

(B)—Newfoundland.

6. Newfoundland followed the example of Canada by passing an Act in 1915 (Naturalization Act, Cap. 11 of 1915) on the same lines as the Canadian Act of 1914. His Majesty's Government in Great Britain were, however, advised that, in the absence of any legislative declaration such as that made by Canada, there was a doubt whether this amounted to a formal adoption of Part II, and accordingly a further Act was passed by Newfoundland in 1916 removing the doubt.

(C)—Australia.

7. Australia, by an Act passed in 1920 (The Nationality Act of 1920, No. 48 of 1920), re-enacted Parts I and III of the Imperial Act without any variations, and re-enacted and formally adopted Part II with certain variations. These variations have not so far given rise to difficulty.

(D)—New Zealand.

8. The position in New Zealand in recent years has been that New Zealand had not adopted Part II of the Imperial Act and that, as a result of this fact, and of the provisions of the British Nationality and Status of Aliens (in New Zealand) Act, 1923, a person who has been naturalised in New Zealand is legally an alien outside the limits of the Dominion, and a person to whom a certificate of Imperial naturalisation has been granted elsewhere has hitherto been, by New Zealand law (Section 3 (3)), an alien unless and until he has obtained a New Zealand certificate.

9. In July, 1928, a British Nationality and Status of Aliens (in New Zealand) Bill was introduced into the New Zealand Parliament. This Bill provides (Section 3) for the adoption of Part II of the Imperial Act, which is set out in full in the First Schedule to the Bill and contains a declaratory statement (Section 6), with regard to the provisions of Parts I and III of the Imperial Act, which are set out in the Second Schedule to the Bill.

The Bill has passed both Houses of Parliament and is reserved for His Majesty's assent.

(E)—South Africa.

10. In July, 1926, South Africa passed the British Nationality in the Union and Status of Aliens Act, re-enacting Parts I, II, and III of the Imperial Act, with important additions and variations. The most important of these differences are as follows :—

- (a) Under Section 3 of the Union Act a holder of a certificate of local naturalization granted before 1st July, 1926, is entitled as of right to a certificate of Imperial naturalization, and such a person may not fulfil any of the qualifications of residence or character laid down in the Imperial Act. It may be questioned whether in law a certificate granted under this provision has any effect outside the Union if the grantee does not in fact possess the qualifications required by Part II as repeated in the Union Act. A case has already come under notice in which a person of this class who had been refused a certificate in this country has after a short visit to South Africa returned here with a certificate of Imperial naturalization granted there. But as there is in the Minister a discretion in certain circumstances to deprive the holder of the local certificate of that certificate, the difference between the two systems may not be so great as it appears at first sight.
- (b) Section 4 (1) (b) authorises the grant of special certificates of Imperial naturalization to persons domiciled in the Union for the five years immediately preceding the commencement of the Act on the basis of their service in the British or Republican Forces during the Boer War.
- (c) Section 29 confers British nationality upon any person of European descent born in the South African Republic between the 18th June, 1894, and the 1st September, 1900 (the date of annexation), whose father was neither a burgher of that Republic nor a British subject.

(F)—Irish Free State.

11. The Irish Free State has not as yet passed any legislation on this subject.

DOMINION CITIZENSHIP.

The only Dominions in which legislation is in force for the definition of citizenship are Canada, South Africa, and the Irish Free State.

(A)—Canada.

1. There are two Canadian enactments to consider, viz., the Canadian Immigration Act, 1910 (as amended by numerous subsequent enactments), which defines the expression "Canadian citizen" for the purpose of immigration; and the Act of 1921 for the definition of "Canadian nationals."

2. By the former Act "Canadian citizen" means :—

- (i) A person born in Canada who has not become an alien ;
- (ii) A British subject who has Canadian domicile ; or
- (iii) A person naturalized under the laws of Canada who has not subsequently become an alien or lost Canadian domicile.

A Canadian citizen for this purpose must, therefore, be a British subject who possesses British nationality everywhere, or a person who by local naturalization in Canada is a British subject within the limits of Canada. Domicile and the period of time necessary to acquire a domicile are specially defined by the Canadian Act, and the expression itself has not the same meaning as in English law.

3. It was intended by the Canadian Government that the Act of 1921 should provide a clear-cut definition of Canadian nationals for the purpose in particular of identifying those persons who would be affected by the extra-territorial legislation which, in 1921, it was anticipated would be authorised by the then proposed amendment of the British North America Act. By this Act the following persons are Canadian nationals :—

- (a) Any British subject who is a Canadian citizen within the meaning of the Immigration Act, 1910, as amended up to 1921 ;
- (b) The wife of any such citizen ;
- (c) Any person born out of Canada whose father was a Canadian national at the time of that person's birth ; or with regard to persons born before the passing of the Act, any person whose father at the time of such birth possessed all the qualifications of a Canadian national as defined by the Act.

This definition evidently contemplates that the Canadian national shall in all cases be a person who possesses in Canada the status of a British subject.

4. Section 2 of the Act of 1921 provides that a person who is a Canadian national shall cease to be a Canadian national on making a declaration renouncing Canadian nationality if he has become a national also of the United Kingdom, or of any self-governing Dominion. This section pre-supposes that provision is made or will be made in the law of the United Kingdom and of the Dominions for the purpose of determining who are the nationals of those parts of the Empire.

(B)—South Africa.

5. The Union of South Africa Nationality and Flags Act, 1927, contains provisions for the definition of South African nationals similar to those in the Canadian Act of 1921 for the definition of Canadian nationals.

6. On the question whether South African nationals must be British subjects, it may be of interest to quote the following extract from the speech of the Minister of the Interior (Dr. Malan) on the Second Reading of this Bill in the House of Assembly on 24th May, 1927.

"The Bill made it quite clear that every South African national was and must be a British subject. South African nationality was merely a small circle within a larger one."

(C)—Irish Free State.

7. Local citizenship in the Irish Free State is governed by Article 3 of the Irish Free State Constitution. This Article—

- (a) defined Irish Free State citizenship, at the time when the Constitution came into force, in such a way as to include persons who were not necessarily British subjects, and
- (b) confers power to determine the conditions governing the future acquisition and termination of Free State citizenship. This power has not been exercised.

(2)—Nationality of Married Women.

1. At the last Imperial Conference the Nationality Committee, over which the Home Secretary presided, considered a number of proposed amendments of the British Nationality and Status of Aliens Act, 1914 (4 & 5, Geo. V, c. 17). The most important of these was a proposal relating to the nationality of married women. This proposal was to the effect that the existing principle of the law as enacted in Section 10 of the Act of 1914 (that the national status of a wife should follow that of her husband) should be abandoned, so far at any rate as that principle affects the status of a British woman who married an alien.

2. The specific proposal before the Nationality Committee was based on a Resolution passed unanimously in the House of Commons on the 18th of February 1925, as follows:—

“That in the opinion of this House a British woman should not lose or be deemed to lose her nationality by the mere act of marriage with an alien but that it should be open to her to make a declaration of alienage.”

A Resolution in similar terms was passed by the House of Representatives in Australia on the 25th of February, 1926.

3. In the course of discussion of this proposal at meetings of the Nationality Committee serious differences of opinion were disclosed. Some of the Dominions were in favour of the proposed change, while others were against any alteration of the law on the ground that it would be unsuitable to their own conditions and requirements, and that socially and politically there was no need or demand for it. The Government in Great Britain itself had not adopted any considered policy on the question, and the Nationality Committee reported to the following effect, as recorded in the Summary of Proceedings, Cmd. 2768, p. 39:—

“On this matter some divergence of view was disclosed and the Committee were unable to arrive at a unanimous conclusion. Since however, they attach great importance to the maintenance of uniformity throughout the various parts of the Empire in the law relating to British nationality they decided to recommend to the Conference that further consideration of the question should be postponed pending the Report of the Committee of Experts . . . and in view of the possibility of an attempt being made to regulate the problems of dual nationality and no nationality by international agreement.”

(3)—Disabilities to which a British Woman becomes subject in the United Kingdom on Marriage with an Alien.*Franchise and Public Offices.*

1. Under the Representation of the People Act, 1918 (7 & 8 Geo. V, c. 64), Section 9 (3), a person is not entitled to be registered or to vote as a parliamentary or local government elector if he is not a British subject.

A woman who has ceased to be a British subject by reason of marriage with an alien is therefore disqualified for the franchise.

As an alien such a woman is of course ineligible for election as a member of Parliament. By Section 46 (1) of the Local Government Act, 1894 (56 & 57 Vic. c. 73), aliens are disqualified also from being members of Metropolitan Borough Councils, Urban and Rural District Councils, and Boards of Guardians.

Civil Service.

2. By Section 6 of the Aliens Restriction (Amendment) Act, 1919 (9 & 10 Geo. V, c. 92), it is provided that after the passing of that Act no alien shall be appointed to any office or place in the Civil Service of the State. Apart from this general prohibition in the case of aliens, any British woman who marries is as a rule required to resign her appointment in the Civil Service, and accordingly if a British woman married to an alien were excepted from the scope of the general prohibition in Section 6 of the Act of 1919, it would be of little or no assistance to her so long as it is the general policy not to employ married women in established situations.

Old Age Pensions.

3. Under the Old Age Pensions Acts, 1908 to 1924, a claimant for a pension whose claim is not within the scope of Section 20 of the Widows, Orphans and Old Age Contributory Pensions Act, 1925 (15 & 16 Geo. V, c. 70), must satisfy the Pension Authorities that for at least ten years up to the date of the receipt of any sum on account of a pension, he has been a British subject. This condition is, however, not required to be fulfilled in the case of a woman who satisfies the Pension Authorities that she would, but for her marriage with an alien, have fulfilled this condition.

A British woman who marries an alien is therefore eligible for an old age pension.

Aliens Restriction Acts, 1914 and 1919 (4 & 5 Geo. V, c. 12, and 9 & 10 Geo V, c. 92), and Aliens Order, 1920.

4. A British woman who becomes an alien by marriage is subject to the restrictions imposed by the Aliens Order on aliens. She is thus prohibited from landing in the United Kingdom without the leave of an Immigration Officer, and she is required to register as an alien if resident in the United Kingdom. She is also liable to be deported as an alien.

By Article 14 of the Aliens Order the Secretary of State may exempt from all or any of the provisions of the Order, any person or class of persons, either conditionally or unconditionally, or subject to conditions.

It may be possible for the Secretary of State to exercise this power in favour of women who are aliens by marriage. So far as concerns liability to register as an alien, this would appear to be quite practicable, and exemption is in fact granted from time to time in such cases where there are special circumstances. General exemption from the obligation to obtain leave to land in the United Kingdom rests on a somewhat different footing. It is only in very exceptional circumstances that leave to land is refused in the case of the British-born wife of an alien.

By Section 7 of the Aliens Restriction Act, 1919, an alien is not allowed to assume or use any name other than that by which he was ordinarily known on the 4th August, 1914. Any exception in favour of British women married to aliens would require an amendment of the section.

Registration of Business Names Act, 1916 (6 & 7 Geo. V, c. 58).

5. In Section 18 of this Act the nationality if not British, in addition to the name, of a person carrying on business is in certain circumstances required to be stated on all business letters and documents. This provision extends to a woman who has become an alien by marriage and an exemption would require legislation.

**(4)—Pension and Franchise Rights in the Dominions of a British Woman
Marrying an Alien.**

AUSTRALIA.

1. The wife of an alien is deemed to be an alien (Act 48 of 1920, Section 18).

Old Age Pensions :—

Under the invalid and old age pensions legislation of the Commonwealth certain classes of persons including aliens are not qualified to receive either of such pensions, but it is expressly laid down that no woman having married any person so disqualified shall in consequence only of such marriage be disqualified to receive such pensions. A British woman marrying an alien would therefore not be disqualified. (Invalid and Old Age Pensions Act, 1908-1926, Sections 16 and 21.)

Mothers' Allowances :—

Both New South Wales and Victoria provide for payments in certain circumstances to mothers in support of dependent children. There is nothing to show that any discrimination is made against a person who is an alien.

Parliamentary Franchise :—

In the Commonwealth the franchise is limited to natural-born or naturalized subjects of either sex (Act 27 of 1918, Section 39).

This is also the case in respect of all the States. A British woman in Australia marrying an alien would therefore forfeit her right to the franchise.

CANADA.

2. The wife of an alien is deemed to be an alien (Act 44 of 1914, Section 10).

Old Age Pensions :—

No old age pensions. In Canada, the movement, which in the United Kingdom and other Dominions resulted in the granting of old age pensions, took the form of providing Government annuities purchasable by any person, over the age of five years, domiciled or resident in the Dominion.

Mothers' Allowances or Pensions :—

In certain of the Canadian Provinces, viz., Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan, mothers' allowances or pensions are granted to wives or widows in support of dependent children. Such allowance or pension is, in the case of Ontario, payable to a woman who was a British subject by birth or naturalization (10 & 11 Geo. V, c. 89, Section 3 (e)), but in British Columbia no mother is entitled to such allowance or pension unless she is a British subject (Cap. 176 Revised Statutes, 1924, Section 4 (a)). There is nothing in the corresponding legislation of Alberta, Manitoba, and Saskatchewan to suggest that such allowance would be refused to a woman if she were an alien.

Parliamentary Franchise :—

The Dominion franchise is limited to British subjects, male or female (10 & 11 Geo. V, c. 46, Section 29).

Throughout the Provinces the franchise is limited to British subjects* of either sex with the exception of Quebec, where apparently males only are entitled to vote. A British woman marrying an alien would therefore possess no right to either the Dominion or any Provincial franchise.

IRISH FREE STATE.

Old Age Pensions :—

3. The Imperial Old Age Pensions Acts, 1908-1919, as amended by Irish Free State Act 19 of 1924, are in force in the Irish Free State. Under these Acts a woman marrying an alien is eligible for pension.

* In British Columbia a person is entitled to vote if, *inter alia*, he is "entitled within the Province to the privileges of a natural-born British subject."

Parliamentary Franchise :—

All citizens of the Irish Free State without distinction of sex are eligible for the franchise (Irish Free State Constitution, Article 14).

Article 3 of the Constitution, while defining the conditions of citizenship at the time of the coming into operation of the Constitution, states that the conditions governing the future acquisition and termination of citizenship shall be determined by law. No such legislation has yet been passed.

NEWFOUNDLAND.

4. The wife of an alien is deemed to be an alien (Cap. 78 Consolidated Statutes, 1916, Section 10).

Old Age Pensions :—

The conditions laid down in Section 2 of the Newfoundland Old Age Pensions Act (Cap. 74 Consolidated Statutes, 1916) make no reference to nationality. Presumably therefore a British woman married to an alien would not be disqualified thereby.

Parliamentary Franchise :—

The franchise is limited to British subjects (Cap. 3 Consolidated Statutes, 1916, Section 4 as substituted by 15 Geo. V, cap. 7, Section 2). A British woman marrying an alien would therefore be disqualified.

NEW ZEALAND.

5. The wife of an alien is deemed to be an alien (Imperial Act, 1914-1922, Section 10, scheduled to New Zealand Act 46 of 1923).

Old Age, etc., Pensions :—

The Pensions Act, 1926 (No. 56 of 1926) provides, *inter alia*, for old age pensions, widows' pensions, and pensions for the blind. The Act does not apply to aliens (Section 91 (1) (b)), and the only circumstances in which a British woman having married an alien would be entitled to these pensions are if her husband is deceased, or if she is legally separated from him (see Section 91 (3)).

Parliamentary Franchise :—

An alien is not entitled to have his name registered on the electoral roll (No. 101 Consolidated Statutes, 1908, Section 38; see also the New Zealand Official Year Book, 1927, page 56).

UNION OF SOUTH AFRICA.

6. The wife of an alien in the Union is deemed to be an alien (Act 18 of 1926, Section 12).

Old Age Pensions :—

No legislation on the subject.

Parliamentary Franchise :—

Women, whether British or alien, have no rights (i.e., throughout the Union, the franchise is confined to male adults)—vide Official Year Book, 1910-1925, page 116, paragraph 8 (1) (1).

CHAPTER IV.

THE JUDICIAL COMMITTEE.

Appeals to the King in Council.

1. Appeals from courts in the Dominions come before the King in Council (i.e., before the Judicial Committee) in one of three ways :—

- (i) As of right in pursuance of Statute or Order in Council ;
- (ii) By leave granted by the court from which the appeal is made, also in pursuance of Statute or Order in Council ;
- (iii) By special leave granted under the Royal Prerogative by the King in Council.

2. The Constitutions of the Commonwealth of Australia, the Union of South Africa, and the Irish Free State contain the following provisions with regard to appeals to the King in Council :—

Constitution of the Commonwealth of Australia (Schedule to the Commonwealth of Australia Constitution Act of 1900 (63 & 64 Vic. c. 12)), Section 74.

" No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

" The High Court may so certify if satisfied that for any special reason the certificate should be granted and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

" Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal Prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure."

South Africa Act, 1909 (9 Edw. VII, c. 9), Section 106.

" There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council, but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure ; provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890."

Irish Free State Constitution Act, 1922 (Session 2) (13 Geo. V, Sess. 2, c. 1) Schedule, Article 66.

"The Supreme Court of the Irish Free State shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal or Authority whatsoever.

"Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave."

3. There are no similar constitutional provisions in the cases of the Dominions of Canada and New Zealand, but the Dominion of Canada has made the following provision in Section 59 of Chapter 139 of the Revised Statutes of Canada :—

"The judgment of the (Supreme) Court shall, in all cases, be final and conclusive, and no appeal shall be brought from any judgment or order of the Court to any Court of Appeal established by the Parliament of Great Britain and Ireland by which appeals or petitions to His Majesty in Council may be ordered to be heard, saving any right which His Majesty may be graciously pleased to exercise by virtue of his royal prerogative."

4. It will be seen from the above survey that the present position as regards the right of the King in Council to give special leave to appeal is (1) that the right now exists as regards all the Dominions and their constituent Provinces or States (except in the case of the Commonwealth of Australia in respect of the limited class of Constitutional appeals above referred to); (2) that the Parliaments of Australia and South Africa have power to pass laws limiting the matters in respect of which such leave may be asked, but that no such laws have in fact been passed, and any such law must be reserved for His Majesty's pleasure, but (3) that the Parliaments of Canada, New Zealand, and the Irish Free State have no such power.

5. It appears expedient to add a short note with regard to the appeal as of right. This has, in general terms, been abolished in the case of the High Court of Australia (Section 73 of the constitution), the Supreme Court of South Africa (*ubi supra*), and the Supreme Court of the Irish Free State (*ubi supra*) by Imperial Statute, and in the case of the Supreme Court of Canada (*ubi supra*) by Dominion legislation. The right still remains in New Zealand, and also in Newfoundland, and is regulated in the case of the former by Order in Council made under the Judicial Committee Act, 1844 (7 & 8 Vic. c. 69), and in the case of the latter by Order in Council made under the Newfoundland Act, 1824 (5 Geo. IV, c. 67), (providing for the administration of justice in that Colony). The right also remains in the case of the Canadian Provinces and of the Australian States.

6. There is also an appeal as of right from Indian courts; it is regulated by an Order in Council of 9th February, 1920 (under the Judicial Committee Act, 1833 (3 & 4, Will. IV, c. 41)), by clauses in the letters patent which govern the several High Courts in India, and by Sections 109 and 112 of the Code of Civil Procedure.

7. There are certain matters, however, with regard to which the appeal as of right cannot be abolished by Dominion legislation so long as the Colonial Laws Validity Act, 1865, continues in its present application to the Dominions. These are Admiralty Appeals under Section 6 of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27), and Prize Appeals under Section 5 of the Naval Prize Act, 1864 (27 & 28 Vic. c. 25). Admiralty Appeals to the Privy Council are expressly saved by the South Africa Act, 1909, but the provisions of the Commonwealth of Australia and the Irish Free State Constitutions are silent on the subject.

CHAPTER V.

THE OFFICIAL SECRETS ACTS.**The Official Secrets Act, 1889** (52 & 53 Vic. c. 52).

1. This Act applied to all acts made offences by the Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere (Section 6 (1)). Section 5 provided for the suspension by Order in Council of this Act in any British Possession the Legislature of which had made equivalent provision, and "British possession" was defined as any part of His Majesty's dominions not within the United Kingdom.

The Act was accordingly suspended in Jersey (1890) and in the Isle of Man (1890).

The Official Secrets Act, 1911 (1 & 2 Geo. V, c. 28).

2. This Act repealed the Act of 1889 but re-enacted in Section 10 (1) the provisions of Section 6 (1), and in Section 11 the provisions of Section 5, of the earlier Act.

Under Section 11 the Act has been suspended in Malta (1914), the Commonwealth of Australia (1915), and India (1923).

The Official Secrets Act, 1920 (10 & 11 Geo. V, c. 75).

3. This Act supplements and amends the Act of 1911 (referred to as the principal Act) and provides (Section 11 (1)) that it shall be construed as one with the principal Act and that the two Acts may be cited together as the Official Secrets Acts, 1911 and 1920.

By proviso (a) to Section 11 (1), the Dominions and India are expressly excluded from its operation, but it applies to all the rest of His Majesty's dominions, and it may be mentioned that, on Malta having passed legislation equivalent to the Act of 1920, the Order in Council of 1914 suspending the Act of 1911 in Malta was replaced by an Order in Council in 1923 suspending both Acts in that Island.

It would not appear that either the Act of 1911 or the Act of 1920 has been suspended in Jersey or the Isle of Man.

The Act was passed on the 23rd December, 1920, and copies were sent out to the Dominions on the 15th January, 1921. The Dominions generally have not passed similar legislation up to the present time; but the Irish Free State has recently issued an Order under the (Free State) Adaptation of Enactments Act, 1922, with the object of adapting the Acts of 1911 and 1920 for Free State purposes only.

CHAPTER VI.

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- (1) **THE FUGITIVE OFFENDERS ACT, 1881.**
 - (2) **THE EXTRADITION ACTS, 1870 TO 1906.**
 - (3) **THE COLONIAL PRISONERS REMOVAL ACTS, 1869 AND 1884.**
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(1)—The Fugitive Offenders Act, 1881.

1. The Fugitive Offenders Act, 1881 (44 & 45 Vic. c. 69), applies throughout His Majesty's dominions. Part I of the Act provides machinery for securing that a person accused of having committed certain offences in one part of these dominions can be arrested and returned to that part if found in some other part. The procedure provided for this purpose bears a general resemblance to extradition, but it is naturally of a simpler and less formal character, since there is no question, as in the case of extradition, of the Government of any part dealing with foreign States.

The offences to which Part I of the Act applies are treason and piracy and every offence for the time being punishable, in the part of His Majesty's dominions in which it was committed, by not less than twelve months' imprisonment with hard labour, or any greater punishment.

2. The first step in the procedure, under Part I of the Act, is the issue in the place where the offence was committed of a warrant for the arrest of the offender. The arrest may be effected either under the authority of an endorsement of this warrant by the proper authority in the place to which the fugitive goes or, as is more usually the case, under authority of a provisional warrant issued by a magistrate in that place. The application for a provisional warrant must be supported by such information as would justify the issue of a warrant, if the offence of which the fugitive is accused had been committed in the jurisdiction of the magistrate to whom the application is made (Section 4).

3. The essential requirements of the system established by Part I are: (a) that a fugitive cannot be sent back to the place whose authorities have applied for his return until the original warrant has arrived (Section 5); (b) that the evidence produced to the magistrate shall, according to the law ordinarily administered by him, be such as to raise a strong or probable presumption that the fugitive committed the offence mentioned in the warrant (Section 5); (c) that the fugitive shall only be returned under the authority of a warrant under the hand of a Secretary of State in the United Kingdom or the Governor of the Possession, as the case may be.

The Act provides certain safeguards so as to ensure, e.g., that the fugitive shall not be returned until he has had the opportunity of applying for a writ of habeas corpus.

4. The procedure laid down by this Act has hitherto necessarily been dependent upon an Act of the Imperial Parliament giving extra-territorial effect throughout all the dominions and on British ships on the high seas to warrants of return issued in any part. Thus, by Section 6 of the Act of 1881, a warrant of return signed by the Secretary of State or the Governor of a British Possession authorises the conveyance of the offender by sea or otherwise in legal custody to the part of His Majesty's dominions from which he is a fugitive. Section 27 of the Act provides that the fugitive may be sent "in any ship belonging to Her Majesty or to any of Her subjects" and empowers the authority

signing the warrant to require the master of the ship to receive the fugitive and on the ship's arrival in the part of His Majesty's dominions to which he is being returned to give him into custody of some constable there to be dealt with according to law.

5. The Act contains no provision corresponding to the provision in Section 18 of the Extradition Act, 1870 (33 & 34 Vic. c. 52), which provides for the complete suspension of the Imperial legislation in the case of a British Possession which has passed comprehensive legislation of its own. Section 32 of the Act of 1881 makes provision for recognising and giving effect by Order in Council to local legislation relating to certain specified matters; and when such an Order has been made the local law, subject to any modification or alterations specified in the Order, has effect throughout His Majesty's dominions and on the high seas as if it were part of the Act of 1881. The matters specified include the definition of offences committed in the Possession to which the Act of 1881 is to apply, the determination of certain matters of procedure and costs and generally anything which is necessary or proper for the carrying of the Act into effect in the Possession.

6. In Part II of the Act of 1881 (Sections 12 to 19) there are provisions relating to the inter-colonial backing of warrants so as to facilitate, without the intervention of the Governor, the transfer of accused persons as between British Possessions which are grouped together for this purpose under the Act by reason of their contiguity. This scheme applies only to groups of British Possessions which are so constituted by Order in Council.

In the case of Australia an Order was made under the Act in 1925 for the purpose of grouping together the different Australasian territories.

(2)—The Extradition Acts, 1870 to 1906.

1. The Acts of the Imperial Parliament relating to extradition are :—

- The Extradition Act, 1870 (33 & 34 Vic. c. 52) ;
- The Extradition Act, 1870 (Amendment) Act, 1873 (36 & 37 Vic. c. 60) ;
- The Extradition Act, 1895 (58 & 59 Vic. c. 33) ;
- The Extradition Act, 1906 (6 Ed. VII. c. 15).

2. The Imperial Acts authorise the carrying out of arrangements made with foreign States for the surrender of criminals who are fugitive from those States and are charged with having committed an extradition crime. To bring the Acts into operation in relation to any foreign State it is necessary that there should be (1) an extradition treaty with that State; and (2) an Order in Council made in Great Britain applying the Acts in the case of that State, subject to such "conditions, exceptions and qualifications as may be deemed expedient" (Section 2 of the Act of 1870). When the Acts are so applied in the case of any foreign State, every fugitive criminal of that State who "is in or suspected of being in any part of His Majesty's dominions (or that part which is specified in the Order in Council applying the Acts, as the case may be) is liable to be apprehended and surrendered" as provided by the Acts whether there is or is not any concurrent jurisdiction in any court of His Majesty's dominions over the crime in respect of which the surrender is sought (Section 6 of the Act of 1870).

The term "Extradition crime" is defined as meaning a crime which, if committed in England or within English jurisdiction or if committed in any British Possession to which the Act is extended, would be one of the crimes described in the first schedule to the Act of 1870.

The term "Fugitive criminal" means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign State who is in or is suspected of being in some part of His Majesty's dominions.

3. The Acts when applied by Order in Council extend, unless otherwise provided in the Order, to every British Possession in the same manner as if, throughout the Acts, the British Possession were substituted for United Kingdom or England as the case may require (Section 17 of the Act of 1870). The Governor of a British Possession has all the powers and duties of the Secretary of State and of a police magistrate in relation to the surrender of a fugitive criminal; and the warrant for surrender is issued by him subject to the right on the part of the person charged to challenge the legality of the surrender in the same way as in the United Kingdom.

4. (a) The Extradition Acts thus apply generally throughout His Majesty's dominions; but provision is made in Section 18 of the Act of 1870 for the suspension of the operation of the Acts in any part of the dominions by Order in Council if, in that part, there is a law or ordinance of the local Legislature in force for carrying into effect the surrender of fugitive criminals and so long as such law or ordinance continues in force, and no longer. A "suspending" Order in Council is only made if the part of the dominions in question has passed a comprehensive Extradition Act for itself. Only in the case of Canada has the Act been so suspended, Canada having enacted many years ago a comprehensive Extradition Law of its own (Canadian Revised Statutes, 1906, c. 155) consolidating and amending previous Acts of 1877 (C. 25) 1882 (C. 20) and 1886 (C. 142).

(b) Section 18 of the Act of 1870 also provides, alternatively, that an Order in Council may be made directing that any local law or ordinance relating to the surrender of fugitive criminals in a British Possession shall have effect in that Possession as if the local law were part of the Act of 1870. The intention and effect of this is to enable a Possession to regulate by local enactment matters of domestic machinery and procedure according to its own requirements. Such enactments have been passed in some of the Dominions and Colonies and effect has been given to them by Orders in Council, with the result that the local procedure becomes (locally) part of the scheme of extradition under the Act of 1870. Extradition procedure in Australia, for example, is regulated by a Commonwealth Act to which effect has been given by an Order in Council under this part of Section 18. (Extradition Act, 1903, of the Commonwealth.)

It is to be observed that "legislature of a British possession" in Section 18 of the Act of 1870 means the Central Legislature of the Possession. In a Dominion, therefore, a Provincial or State Legislature cannot legislate on the subject of extradition as contemplated by the Act of 1870.

It is also to be observed that neither of the alternative powers given by Section 18 is confined to self-governing Dominions. Both extend to all British Possessions, but no Colony has acted on the former alternative (comprehensive legislation).

In a draft Bill prepared during the war, and submitted to and agreed by all the Dominions then existing, it was proposed, *inter alia*, that the Imperial Act should be suspended only in the case of legislation by a Dominion. A copy of the Bill is annexed.

5. The Act of 1870 appears to contemplate only general extradition treaties which apply or may be applied to the whole Empire. Such treaties have in the past been negotiated by His Majesty's Government in Great Britain and up to a recent date (1924) this was done without previous consultation with the Dominions or India. In recently concluded treaties, however, it is provided that the treaty shall not apply to any of the Dominions or India unless notice of accession is given and that it may be separately terminated in respect of any Dominion or India. The corresponding Orders in Council applying the Act of 1870 in the case of the foreign States with whom these treaties have been made contain a provision suspending the operation of the Act within each of the Dominions (except Canada) and India until accession has been notified. Six extradition treaties containing this provision have been negotiated since 1924 and to these all the Dominions have acceded.

It may be pointed out that Canada has entered into two independent obligations with the United States by separate treaties concluded in 1922 and 1925. These treaties are expressed to be supplementary to, and an integral part of the extradition treaties in force between, the United States and Great Britain.

6. With regard to the operation of surrender warrants, the present position is that a surrender warrant issued under the Act of 1870 is valid throughout His Majesty's dominions (save possibly in Canada, which has its own Extradition Act), but a surrender warrant issued in Canada is invalid out of Canada. If a person who is extradited from Canada passes through England *en route*, e.g., to Germany, it becomes necessary, in the event of the offender disputing the legality of his custody, to begin extradition proceedings against him in England *de novo*.* In other words, while in custody under a Canadian warrant only, he cannot be said to be in legal custody in England.

7. It was contemplated that the difficulty mentioned in the last paragraph might be met by an amendment of the Act on the lines proposed in Clause 2 (1) (b) of the Bill, copy of which is annexed.

APPENDIX.

DRAFT OF A BILL TO AMEND THE LAW RELATING TO EXTRADITION AND FUGITIVE OFFENDERS.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.—Extradition.

Power of
legislatures
of British
possessions
to add to
extradition
crimes.

1. It shall be lawful for the legislature of any part of His Majesty's Dominions outside the United Kingdom by law or ordinance to add to the list of extradition crimes mentioned in the First Schedule to the Extradition Act, 1870, such crimes as may be specified in such law or ordinance, and where such a law or ordinance has been passed the Extradition Acts, 1870 to 1906, as extended to that part of His Majesty's Dominions by Order in Council, whether made before or after the passing of this Act, shall as respects that part have effect as if the crimes so added were included in the said list.

Extradition
legislation of
British
possessions.

2.—(1) If by any law or ordinance made either before or after the passing of this Act by the legislature of any part of His Majesty's Dominions outside the United Kingdom provision is made for carrying into effect within such part the surrender of fugitive criminals who are in or suspected of being in such part, His Majesty may by the Order in Council applying the Extradition Acts, 1870 to 1906, in the case of any foreign state, or by any subsequent Order—

- (a) direct that such law or ordinance or any part thereof shall have effect in such part of His Majesty's Dominions with or without modifications and alterations as if it were part of those Acts; or
- (b) if such law or ordinance has been made by the legislature of any of the self-governing Dominions suspend the operation within that Dominion of those Acts or any part thereof so far as they relate to such foreign state, and so long as such law or ordinance continues in force there, and direct that such law or ordinance shall, with or without modification, be recognised and given effect to throughout His Majesty's Dominions and on the high seas, in substitution, as respects the Dominion in question, for the Extradition Acts, 1870 to 1906, or such part thereof as aforesaid.

(2) In this section the expression "self-governing Dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(3) Section eighteen of the Extradition Act, 1870, is hereby repealed, but nothing in this repeal shall affect the provisions of any Order in Council having effect under the said section eighteen, and any such provisions shall continue in force and may be revoked, altered, or amended as if made under this section.

* Police conducting such a person across England are in practice furnished with a provisional warrant of arrest for use if necessary.

3. For removing doubts it is hereby declared :—

- (1) that a warrant for the apprehension of a fugitive criminal under section eight of the Extradition Act, 1870, may be issued before his arrival in the United Kingdom if it is believed that he will shortly arrive there ;
- (2) that evidence on oath of the commission of an offence within His Majesty's Dominions may be taken in the absence of the accused for the purpose of supporting an application for his extradition from a foreign country.

Removal of
doubts on
certain
points.

4. A fugitive criminal committed to prison under section eleven of the Extradition Act, 1870, may, if he consents and does not wish to apply for a writ of habeas corpus, be surrendered before the expiration of the fifteen days mentioned in that section, anything in section three of that Act to the contrary notwithstanding.

Time for
surrender.

5. A Secretary of State may by order vary the forms set out in the schedule to the Extradition Act, 1870, or prescribe new forms in lieu thereof, and may prescribe additional forms for any of the purposes of that Act, and all such forms shall have effect as if enacted in the said schedule.

Forms.

Part II.—Fugitive Offenders.

6. A fugitive committed to prison under section five of the Fugitive Offenders Act, 1881, may, if he consents and does not wish to apply for a writ of habeas corpus or other like process, be surrendered before the expiration of the fifteen days mentioned in that section, and that section and section six of the same Act shall have effect accordingly.

Time of
surrender.

Part III.—General.

7.—(1) This Act may be cited as the Extradition and Fugitive Offenders Act, 1918.

(2) Part I of this Act shall be construed as one with the Extradition Acts, 1870 to 1906, and those Acts and Part I of this Act may be cited together as the Extradition Acts, 1870 to 1918.

Short title
and con-
struction.

(3) Part II of this Act shall be construed as one with the Fugitive Offenders Acts, 1881 and 1915, and those Acts and Part II of this Act may be cited together as the Fugitive Offenders Acts, 1881 to 1918.

(3)—The Colonial Prisoners Removal Acts, 1869 and 1884.

1. The Colonial Prisoners Removal Act, 1869 (32 & 33 Vic. c. 10), provides for agreement between two Colonies for the removal of prisoners from one to the other. Such agreements require the sanction of an Order in Council here. No agreement of this kind, however, has ever been entered into by any Colony which now forms a Dominion or part of a Dominion.

2. The Colonial Prisoners Removal Act, 1884 (47 & 48 Vic. c. 31), provides for the removal of prisoners and criminal lunatics from one British Possession to another or to the United Kingdom. Under the definition of " British Possession " contained in the Act it applies directly to all parts of the Dominions and to India. Every Dominion has, however, long been able to make adequate provision for its own prisoners, and Dominion prisoners are not sent to the United Kingdom under this Act. There might, perhaps, be some rare and exceptional case in which a Dominion desired to do so, and recently a prisoner was, in special circumstances, removed from Southern Rhodesia (a self-governing Colony) to this country under the Act.

CHAPTER VII.

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- (1) CERTAIN ACTS RELATING TO EVIDENCE.
 - (2) THE BANKRUPTCY ACTS, 1914 AND 1926.
 - (3) THE COMPANIES ACTS.
 - (4) THE COINAGE ACTS.
 - (5) INDUSTRIAL PROPERTY.
 - (6) AIR NAVIGATION.
-

(1)—Certain Acts relating to Evidence.

The British Law Ascertainment Act, 1859 (22 & 23 Vic. c. 63).

1. This Act enables a court in one part of His Majesty's dominions to remit a case for the opinion of a court in another part thereof on any point on which the law of the latter is different from the law in force in the part where the remitting court is situate. The latter court is bound to apply the opinion when obtained but the Judicial Committee or the House of Lords (as the case may be) on appeal may adopt or reject the opinion.

The Act applies to the superior courts of law or equity in the Dominions, but there is no information as to the extent, if any, to which they avail themselves of it.

The Foreign Law Ascertainment Act, 1861 (24 & 25 Vic. c. 11).

2. This Act enables courts in His Majesty's dominions to remit a case to a foreign court for an opinion as to the foreign law applicable to the facts of the case, and conversely to pronounce an opinion as to their own law on a case remitted to them by a foreign court.

The Act, however, only comes into operation in pursuance of conventions entered into with foreign States for the purpose, and as it is understood that no such conventions have at present been made it remains practically a dead letter.

The Evidence by Commission Acts, 1859 and 1885 (22 Vic. c. 20, and 48 & 49 Vic. c. 74).

3. These Acts provide for the taking of evidence in cases pending before courts in His Majesty's dominions in places out of the jurisdiction of such courts.

The court issues a commission or order for the examination of witnesses out of its jurisdiction and the court within whose jurisdiction they are makes an order for their examination and the production of documents, etc., and generally enforces the order of the first-mentioned court as if it were its own.

The Act of 1859 provides that "any Supreme Court in any of His Majesty's colonies or possessions abroad, and any judges of any such Court, and every judge in any such colony or possession, who, by an order of His Majesty in Council may be appointed for this purpose, shall respectively be Courts and judges having authority under this Act," and it enables the chief or only judge of the Supreme Court in any of His Majesty's colonies or possessions abroad, so far as relates to such colony or possession, to make rules for giving effect to the provisions of the Act, and regulating the procedure thereunder.

The Foreign Tribunals Evidence Act, 1856 (19 & 20 Vic. c. 113).

4. This Act provides for the taking of evidence in His Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals, and Section 24 of the Extradition Act, 1870, extends its provisions to criminal matters of a non-political character so pending.

The Act contains provisions similar to those contained in the Evidence by Commission Act, 1859, with regard to the judges who are to have authority under the Act in the colonies, but differs from that Act in conferring the rule-making power on the Lord Chancellor, with the assistance of two of the judges of the Courts of Common Law at Westminster (now the Supreme Court Rule Committee).

The practice under both Acts is regulated by the same rules in England (*see* Rules of the Supreme Court, Order 37, rules 54-60).

It would appear that the Dominions, in general, have adopted similar rules of practice, both as regards the Evidence by Commission Act and as regards the Foreign Tribunals Evidence Act.

The Evidence Act, 1851 (14 & 15 Vic. c. 99), Section 11.

5. Under this Section every document which, under any law for the time being in force, is admissible in the English or Irish Courts without proof of seal, stamp, or signature or of the judicial or official character of the person signing the same is made admissible to the same extent and for the same purposes in any court of any of the British colonies without proof of seal, stamp, or signature or of the judicial or official character of the person signing the same.

Several of the Dominions have already re-enacted, without material alteration, the substance of this provision in its relation to themselves.

(2)—The Bankruptcy Acts, 1914 and 1926.

1. The Bankruptcy Acts, 1914 and 1926 (4 & 5, Geo. V, c. 59, and 16 & 17 Geo. V, c. 7), which contain the bankruptcy code at present in force apply in some respects to the Dominions.

2. By Section 122 of the Bankruptcy Act, 1914 (commonly known as the mutual aid section), it is provided that the High Court, County Courts, Courts having jurisdiction in bankruptcy in Scotland and Ireland and every British Court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of those Courts, respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and that an Order of the Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to matters directed by the Order, such jurisdiction as either the Court which made the request or the Court to which the request was made would exercise in regard to similar matters within their respective jurisdiction.

3. By Section 167 of the Bankruptcy Act, 1914, the property which passes on an Order of Adjudication is defined as money, goods, land and every description of property whether situate in England or elsewhere, and it has been held that a bankrupt's property in the Dominions passes to the Trustee in an English bankruptcy subject, in the case of land, to any local requirements as to the conditions necessary to effect a transfer of real estate there. (*Ellis v. MacHenry*, L.R. 6, C.P. 228 and *Callender v. Lagos*, 1891, A.C. 460.)

4. Whether a Dominion adjudication passes property of the bankrupt outside the territorial limits of that Dominion was formerly open to some doubt. The better opinion, however, now appears to be that the mutual aid section in the English Act of 1914 is properly construed as giving as a matter of practice extra-territorial effect to a Dominion adjudication—*re Levy's Trust*, 30 Chancery Division 119.

5. An order of discharge from an English bankruptcy under an Imperial Act (which includes for this purpose the Scottish Act) is a good defence to an action of debt in any part of the Dominions no matter what the law of the debt may be—(*New Zealand Loan Company v. Morrison*, 1898, A.C. 359). On the other hand an order for discharge under a Dominion Statute is probably not a good discharge outside the jurisdiction of the Dominion unless by the law governing the debt such an order operates as a discharge, e.g., it has been held that a discharge from a Victorian bankruptcy is not a good discharge from a debt governed by the law of England (*Bartley v. Hodges*, 1861, 1 B. and S. 375).

(3)—The Companies Acts.

1. The Companies (Consolidation) Act, 1908 (8 Ed. VII, c. 69), does not apply in the Dominions except with regard to the keeping of Colonial Registers by British companies. By Section 34 of the Act provision is made that a company whose objects comprise the transaction of business in a Colony may, if authorised by its articles, cause to be kept in any Colony in which it transacts business a branch register of members resident in that Colony. By Section 35 it is provided that this Colonial Register shall be kept in the same manner in which the principal register is required by the Act to be kept, and that any competent court in the Colony may exercise the same jurisdiction of rectifying the register as under the Act is exercisable by the High Court in England and, further, that the offences of refusing inspection or copies of the Colonial Register may be prosecuted summarily before any tribunal in the Colony having summary criminal jurisdiction.

2. Mention should also be made of the Companies Act, 1928 (18 & 19 Geo. V, c. 45), which was passed in August of 1928 but which does not come into force until a day to be fixed by Order in Council. It is hoped that the necessary legislation to consolidate all the Companies Acts will be passed during the year 1929, and in the consolidated Act the provisions of the Act of 1928 will be included.

3. By Section 10 of that Act amendments are made in Section 34 of the Act of 1908 above referred to. The effect of these amendments is that a Company having a share capital, whose objects comprise the transaction of business in any part of His Majesty's dominions outside Great Britain, the Channel Islands, or the Isle of Man, may cause to be kept in such part of His Majesty's dominions in which it transacts business a Branch Register of members resident in that part, and for references to a "Colonial Register" wherever they occur in the Act of 1908 or in any Articles of Association, there is substituted a reference to a "Dominion Register." Provision is also made for punishment by fine of Companies in default in complying with the provisions of Subsection (2) of Section 34, and Subsection (3) of Section 35 of the Act of 1908, which provide for the notification of the situation of a Branch Register to the Registrar of Companies, and for the keeping at the Registered Office of the Company of a duplicate of the Dominion Register.

4. By Section 11 of the 1928 Act provision is made that if by virtue of the law in force in any of His Majesty's dominions outside Great Britain, companies incorporated under that law have power to keep in Great Britain Branch Registers of their members resident in Great Britain, His Majesty may, by Order in Council, direct that Sections 30 and 32 of the Companies Act, 1908, which deal with the inspection of the Register and the power of the Court to rectify the Register shall, subject to any modifications and adaptations specified in the Order, apply to such Branch Registers kept in Great Britain.

(4)—The Coinage Acts.

1. The coinage of money and matters relating thereto are part of the Royal Prerogative, though now regulated by a series of Statutes the most important of which for the present purpose are the Coinage Act, 1870 (37 Vic. c. 10), subsequently amended by the Coinage Act, 1891 (54 & 55 Vic. c. 72), and the Coinage Act, 1920 (10 Geo. V, c. 3). It is an interesting but unprofitable speculation whether the original prerogative powers in relation to the coinage still exist, or are to be regarded as superseded by existing legislation.

2. There is no record of the grant of this prerogative to the Governor of a Dominion. It is a branch of the prerogative which, subject to Imperial legislation, can be exercised by the self-governing Dominions, and in fact local Statutes on the subject have been passed in all the Dominions with the exception of New Zealand. The British North America Act, 1867, and the Commonwealth of Australia Act, 1900, reserve the exclusive power of legislating on coinage and legal tender to the Dominion and Commonwealth Parliaments, respectively, while in the other Dominions the power is derived from the right to legislate for the peace, order, and good government in the Dominion constitution. By Section 4 of the Government of Ireland Act, 1920, the Parliament of Northern Ireland is expressly prohibited from making laws in respect of coinage, legal tender, and negotiable instruments including bank notes. The right of disallowance has been not infrequently exercised in the case of Dominion legislation on coinage matters, though not of recent years; the history of the subject is exhaustively dealt with in Lord Chalmers' book on Colonial Currency (1893).

3. The Imperial coinage legislation, however, is still applicable to the Dominions to the limited extent indicated in the following paragraphs.

4. The Coinage Act, 1870, a consolidating and amending Statute, enacts a standard of weight and fineness for all coins and regulates the amounts for which particular classes of coins shall be legal tender. It prohibits the making and issuing of coinage except by the Mint, and provides that all profits received by the Mint shall be paid into the Exchequer. It further empowers His Majesty, with the advice of the Privy Council, from time to time by Proclamation (*inter alia*) to determine the dimension and design of any coin and the denomination of coins to be coined at the Mint; to call in coins of any date or denomination; to direct that the coins coined in any foreign country shall be current and be a legal tender at such rates and up to such amounts and in such portion of His Majesty's Dominions as may be specified in the Proclamation; to direct the establishment of any branch of the Mint in any British Possession, to impose a charge for the coinage of gold thereat, to determine the application of such charge and to determine the extent to which such branch is to be deemed part of the Mint and to which coins issued therefrom are to be current and be legal tender; to direct that the whole or any part of the Act shall apply to and be enforced in any British Possession with or without any modifications contained in the Proclamation; and to regulate any matters relative to the coinage at the Mint within the existing prerogative of the Crown which are not provided for by the Act. The Act of 1891 amends the Act of 1870 in certain particulars not material to the present purpose. The Act of 1920 makes further amendments in the earlier Act and provides that where, by virtue of a Proclamation made under the Act of 1870, the whole or any part of that Act is in force in any British Possession, the Act of 1870 shall apply in that Possession as amended by the Act of 1920, but in the case of the self-governing Dominions only if the provisions of the Act of 1920 are adopted as regards the Dominion by a Proclamation of the Governor-General or Governor.

5. By a Proclamation dated the 1st August, 1896, and issued under the Act of 1870, certain sections of the Act, as amended by the Act of 1891, were applied to the six Australian States and to New Zealand, the Order in Council by which the Proclamation was approved directing that the Proclamation itself should take effect in each Colony as from the date of its promulgation in the Colony. In New Zealand the Proclamation is still in force; but the establishment of the Commonwealth of Australia in 1900 with its reservation of coinage legislation to the Commonwealth Parliament was followed by a Commonwealth Act of 1909 which dealt with coinage and legal tender of the Commonwealth and provided for a new Commonwealth silver coinage. This Act superseded the Proclamation of 1896 so far as regards Australia, but in order to make it valid (by reason of the Colonial Laws Validity Act) a further Proclamation was necessary repealing that of 1896, and this was duly issued on 23rd January, 1911.

6. A Proclamation under the Act of 1870, dated the 29th November, 1881, applied the whole of the Act of 1870 to the Cape of Good Hope and Natal, and a further Proclamation of the 16th February, 1906, applied certain parts of the Act of 1870, as amended by the Act of 1891, to the Transvaal. A later Proclamation of the 23rd January, 1911, revoked the earlier Proclamation and applied certain sections of the Act of 1870, as so amended, to the whole of the Union of South Africa. Under the Union of South Africa Coinage Act, 1922, the Union Government has power to issue its own bronze and silver coin, and this power is recognised by a Proclamation of 14th December, 1922.

7. There is no Proclamation under the Act of 1870 in force in Canada, but a Canadian Act of 1871 provided for the issue of a Royal Proclamation fixing the nominal rates at which coins struck for use in Canada should be current. A later Canadian Act, however, in 1910 transferred to the Governor-General in Council the Proclamation-making power. Though the Act of 1871 contemplated the issue of a Canadian gold coinage, no gold coins were in fact struck in Canada until the establishment of the Ottawa Mint in 1907.

8. In Newfoundland there appears to have been a combination of local legislation and Royal Proclamations. In accordance with a local Act of 1873, a Proclamation was issued on the 9th August, 1870, authorising a special coinage to be struck at the Royal Mint for Newfoundland. The local Act at present in force is the Currency Act, 1917, which (*inter alia*) empowers His Majesty in Council to cause new coins to be struck for Newfoundland and to fix the rates at which American gold coins shall be legal tender.

9. The position in the Irish Free State is governed by the Free State Coinage Act, 1926, which provides for the issue of silver, nickel, and bronze coins of various denominations, and by the Free State Currency Act of 1927, which authorises the issue of gold coinage, provides for the issue of currency notes, etc. The Irish Free State are now arranging to issue a token coinage of their own.

10. Among other powers conferred by the Act of 1870 upon His Majesty in Council is, as already stated, the power to issue Proclamations establishing branch Mints in any British Possessions. Before 1870, Proclamations for this purpose had been issued under the prerogative and a branch Mint was so established at Sydney in 1855, and at Melbourne in 1869. By Proclamations issued under the Act of 1870, branch Mints were established at Perth in 1898, at Ottawa in 1907, and at Pretoria in 1911. Further provision was made by Proclamation in 1900 in relation to the Mints at Melbourne and Sydney, but the Sydney Mint was ultimately discontinued (also by Proclamation) in 1926. These branch Mints are all under the control of the Royal Mint and of the British Treasury, arrangements being made with the Dominion Governments for the payment by the latter to the British Government of the necessary establishment charges, the profits made by the branch Mint being paid into the local Exchequer. The Ottawa Mint Proclamation, which may be taken as typical, is dated the 2nd November, 1907, and after declaring the establishment of a branch of the Mint at or near Ottawa, provided that gold coins of the same dimensions, designs, weights, and finenesses as gold coins coined at the Mint in England might be coined at the Ottawa Mint and should be deemed to have been issued from the Mint in England and be current and a legal tender in like manner

and to the same extent as if they had been coined in England. They are, therefore, legal tender wherever British gold coin is legal tender. The Proclamation further provides that, subject to any regulations and conditions which may be made by the Master of the Mint in England, the Ottawa Mint shall coin there any gold, silver, bronze, or other coins which the Governor-General of the Dominion desires to be so coined, and which is for the time being a coin of the Dominion and current and legal tender in the Dominion; but the coins so coined shall not for the purposes of the Coinage Act, 1870, be deemed to be coins made at or issued at the Mint in England. They are, therefore, legal tender only within the limits of the Dominion. The Canadian silver coinage is now struck at the Ottawa Mint, and the Australian silver coinage at one or other of the Australian Mints. Similarly in South Africa the branch Mint is engaged in preparing local token currency.

11. Proclamations have been issued under the Act of 1870 from time to time directing that foreign currency shall be a legal tender in various British Possessions at such rates and up to such amounts as may be specified in the Proclamation; and also making legal tender elsewhere than the country of origin coins struck at any of the branch Mints. Similar Proclamations were issued before 1870 under the Royal prerogative. Thus, a Proclamation dated the 19th August, 1853, declared gold coins made at the Sydney Mint to be a legal tender in a number of British Possessions including the Cape of Good Hope.

12. The control of note issues appears never to have been regarded as part of the prerogative, and though local Acts on the subject have from time to time been disallowed for various reasons, there is no case in which any Proclamation has been issued regulating the note issues in a Dominion, nor is there any Imperial Statute authorising the issue of any such Proclamation. A local Newfoundland Act, however, expressly provided in 1919 that the Act should only come into operation upon a date to be appointed for the purpose by a Proclamation of the Governor to the effect that the Act had been approved and confirmed by His Majesty in Council. This approval was signified by an Order in Council dated the 29th October, 1919, which was followed by a Proclamation of the Governor dated the 3rd March, 1920.

13. It will be seen, therefore, that matters relating to currency in the Dominions may be regulated at the present time either (1) by local legislation; or (2) by Proclamation under the Act of 1870; or (3) partly by local legislation and partly by Proclamation. In Australia, Canada, Newfoundland, and the Irish Free State, the currency at the present time is for the most part regulated by local legislation, though Proclamations relating to the branch Mints in Australia and Canada still remain in force; in New Zealand and, to some extent, in the Union of South Africa by Proclamations under the Act of 1870. It should be observed that the Act of 1870 is not employed to regulate questions of currency which are domestic to the Dominion. The Dominions have a free hand so far as their token coinage is concerned, e.g., Section 6 (1) of the Union of South Africa Coinage Act, 1922, provides that:—

“The Governor General may, by proclamation in the Gazette, do any of the following things:

- (a) determine the dimensions of and design for any Union coin,
- (b) diminish the amount of the remedy allowed in the case of Union coins,
- (c) determine the least current weight of any Transvaal or Union coin other than gold coin,
- (d) call in Transvaal coins or Union coins of any date or denomination,
- (e) revoke or alter any such proclamation previously issued.”

14. To sum up, the machinery of Proclamations under the Act of 1870 is only used, so far as the Dominions are concerned, to direct the establishment and to regulate the operations of the branch Mints (which have the privilege of coining sovereigns and half-sovereigns) or to regulate the token coinage in those Dominions (e.g., New Zealand) which have elected to retain British silver in circulation.

ORDERS IN COUNCIL AND PROCLAMATIONS RELATING TO COINAGE AND CURRENCY
IN THE DOMINIONS: IN FORCE, 1928.

1896. February 8.

Order in Council assenting to Bill passed by Legislature of Western Australia providing for the maintenance of a branch of the Royal Mint at Perth, Western Australia.

1896. August 1.

Order in Council approving Proclamation applying parts of the Coinage Act, 1870, to New Zealand.

1897. October 13.

(Amended by Order in Council and Proclamation of 7th March, 1898.)

Order in Council approving Proclamation establishing a Branch Mint at Perth, Western Australia, giving currency to gold coins coined there as if they had been issued in England, etc.

1900. September 17.

Order in Council approving the Melbourne Mint Proclamation, 1900, continuing establishment of Melbourne Branch Mint (originally established by Proclamation of 7th August, 1869); giving currency to sovereigns and half-sovereigns of the Melbourne Branch Mint as if they had been issued in England, etc.; and revoking previous Order in Council and Proclamation of the 7th August, 1869.

1900. September 17.

Order in Council approving the Sydney Mint Proclamation, 1900, continuing establishment of Sydney Branch Mint (originally established by Order in Council of 19th August, 1853) giving currency to sovereigns and half-sovereigns of the Sydney Branch Mint as if they had been issued in England, etc.; and revoking previous Orders in Council and Proclamations of 19th August, 1853, 18th October, 1854, 3rd February, 1866, 10th November, 1866, 14th January, 1871, 24th March, 1871, and 23rd November, 1877.

1907. November 2.

Order in Council approving the Ottawa Mint Proclamation, 1907, establishing Branch Mint at Ottawa, provision having been made for its maintenance by the Dominion Government; and giving currency to sovereigns and half-sovereigns of Ottawa Branch Mint, as if they had been issued in England, etc.

1911. January 23.

Order in Council reciting the enactment by the Commonwealth Parliament of the Coinage Act, 1908, and revoking, so far as relates to the Commonwealth of Australia, a Proclamation of 1st August, 1896, applying parts of the Coinage Act, 1870, to the six Australian States.

1911. January 23.

Order in Council approving the Union of South Africa and Basutoland (Coinage) Proclamation, 1911, applying parts of the Coinage Act, 1870, to the Union of South Africa and Basutoland.

1922. December 14.

The Pretoria Mint Proclamation, 1922, establishing a branch of the Royal Mint at Pretoria, reciting that provision has been made for its maintenance by the Government of the Union of South Africa, giving currency to sterling gold coins coined at Pretoria as if they had been coined and issued in England, etc.

1926. November 5.

Sydney Mint (Discontinuance) Proclamation, 1926, discontinuing the branch of the Mint at Sydney.

In addition there were three Proclamations issued on 28th July, 1916, 20th June, 1922, and 25th July, 1924, regulating the payment to be made for bullion by the Australian Branch Mints. The last of these expired in 1925.

There are also two Orders in Council relating to Newfoundland, one of 9th August, 1870, approving a Proclamation giving currency in Newfoundland to certain gold, silver, and bronze coins, the other of 29th October, 1919, approving and confirming the Newfoundland Notes Act, 1919. In each case the Order in Council was required by virtue of a clause in a local Act.

(5)—Industrial Property.

1. The Copyright Act of 1911 (1 & 2 Geo. V, c. 46) *prima facie* does not extend to a Dominion. Uniformity of law, however, can be, and has been, secured by the alternative machinery described below.

2. The first alternative—employed by the Commonwealth of Australia, the Union of South Africa, and Newfoundland—is direct adoption of the 1911 Act. Under Section 25 (1) the Dominion Legislature can declare that Act to be in force in the Dominion “either without any modifications and additions or with such modifications and additions relating exclusively to procedure and remedies or necessary to adapt this Act to the circumstances of the Dominion as may be enacted by such Legislature.”

3. The second alternative, to which recourse was had in the case of New Zealand and Canada, is that of officially recognising the equivalent effect of legislation passed by the Dominion. Under Section 25 (2) when a Dominion has passed legislation giving “substantially identical” rights to works of which the authors (at the date of making the works) were either British subjects resident outside the Dominion or non-British subjects resident in some part of His Majesty’s dominions to which the Act extends, then the Secretary of State may certify that fact by notice in the London Gazette and thereupon, so long as such legislation continues in force, the Dominion is treated (for the purpose of rights conferred by the Act) as one to which the Act extends.

Section 26 expressly authorises a Dominion to repeal or amend copyright enactments (including the 1911 Act) passed by the Imperial Parliament, and contains a further provision for reciprocity.

4. Under Section 3 of the Irish Free State Constitution Act, the Free State Parliament could have adopted the 1911 Act as an Act applicable to a Dominion. This step has not been taken. By the Irish Free State Industrial and Commercial Property (Protection) Act (No. 16 of 1927) the Free State has repealed the 1911 Act. This Act confers rights limited in certain respects, e.g., right of protection against translations—as compared with the Copyright Act of 1911, and the Secretary of State has not found it possible to issue a certificate under Section 25 (2). Negotiations are, however, proceeding with the Irish Free State with a view to the issue of an Order in Council under Section 26 (3), by which substantial reciprocity will be secured.

5. International copyright depends upon the application of the 1911 Act by Order in Council to foreign countries which undertake to give corresponding facilities. The principal Order in Council of 24th June, 1912, amended and extended almost every year since, applied the Act (as modified) to the various countries of the Copyright Union. The Order is expressly excluded from application to the Dominions. The Governors in Council of Dominions to which the 1911 Act extends can make similar Orders in Council in relation to their respective Dominions with like effect.

6. Provisions also exist for the mutual protection of patents, designs, and trade marks throughout the Empire.

(6)—Air Navigation.

1. The only legislation relating to air navigation in force in this country is the Air Navigation Act, 1920 (10 & 11 Geo. V, c. 80). Apart from the question of jurisdiction mentioned in paragraph 2 below, this Act is not expressed to apply to the Dominions, and such application is by implication excluded by Section 4 (1) whereby power is given by Order in Council to extend, with any necessary modifications or exceptions, any of the provisions of the Act to any British Possessions other than those mentioned in the Schedule to the Act, and to any territory under His Majesty's protection. The Possessions mentioned in the Schedule consist of the Dominions (as then existing, that is, not including the Irish Free State), and India; and by the proviso to Section 4 (1) "territory under His Majesty's protection" is defined as excluding any territory over which the Government of any part of His Majesty's dominions mentioned in the Schedule exercises authority.

2. Under Section 14 (1), any offence under the Act, or under an Order in Council or regulations made thereunder, and any offence whatever committed on a British aircraft is, for the purpose of conferring jurisdiction, to be deemed to have been committed in any place where the offender may for the time being be. By Article 2 of the Air Navigation (Consolidation) Order, 1923, made under the Act, the provisions of that Order are expressed to apply (unless the contrary intention appears) to all British aircraft registered in Great Britain and Northern Ireland wherever such aircraft may be. Jurisdiction is thus claimed over offences committed abroad, including offences committed in the Dominions, in or in respect of British aircraft registered in Great Britain and Northern Ireland. But apart from this point, and the special position of the Irish Free State, the Act of 1920 is regarded as having no application to the Dominions, all of which (except the Irish Free State and possibly Newfoundland) have passed air legislation of their own. The position in the Irish Free State is that, presumably under Article 73 of the Constitution, the Act of 1920 is in force there, subject to certain adaptations and modifications which have been made by Order of the Executive Council under the (Irish Free State) Adaptation of Enactments Act, 1922.

3. As regards future air legislation, it should be observed that as regards International relations the most important matters are governed by rules laid down in or under the International Air Navigation Convention of the 13th October, 1919, to which the United Kingdom, all the Dominions and India are parties. In practice similar rules are likely to govern inter-Imperial relations. The Convention does not extend to questions of private aerial law, but other international Conventions with a view to obtaining uniformity on these matters are in prospect.

CHAPTER VIII.

**CERTAIN LEGISLATION OF WHICH THE OPERATIVE EFFECT IS MAINLY
IN RELATION TO FOREIGN TERRITORY.**

- (1) **THE FOREIGN JURISDICTION ACTS, 1890 AND 1913.**
- (2) **EXTRA-TERRITORIAL JURISDICTION IN RESPECT OF OFFENCES
COMMITTED ON LAND BY BRITISH SUBJECTS.**
- (3) **STATUTORY FUNCTIONS OF BRITISH CONSULAR OFFICERS.**

(1)—The Foreign Jurisdiction Acts, 1890 and 1913.

1. This section of this Chapter refers only to the exercise of jurisdiction under the Foreign Jurisdiction Acts over British subjects in countries where such persons possess ex-territorial rights and are consequently withdrawn from the jurisdiction of the local courts. It does not deal with the operation of the Acts in British Protectorates, mandated territories, etc.

2. The jurisdiction which "by treaty, capitulation, grant, usage, suffrance, and other lawful means His Majesty has within divers foreign countries" is exercised under the Foreign Jurisdiction Acts, 1890 and 1913 (53 & 54 Vic. c. 37, and 3 & 4 Geo. V, c. 16). Under these Acts it is lawful for His Majesty in Council to make provision for the exercise of such jurisdiction, and in each of the countries in question there is one or more Orders in Council made under the Acts (under the advice of His Majesty's Government in Great Britain), prescribing or constituting the body of law applicable to British subjects in that country, and establishing courts to administer it. The general scheme is to apply English (or in some cases Indian) law with such modifications or additions as local circumstances may necessitate.

3. This body of law is applicable to all British subjects (including British registered companies) and British ships when within the country in question, irrespective of the part of the Empire from which they may come; there are occasionally special provisions applicable only to Asiatics or other particular classes of British subjects, but these are not material to the present question. The Courts established by these Orders in Council have similarly jurisdiction over all British subjects in the country; they are usually held by consular officers, and where there are barrister judges these are appointed by His Majesty on the advice of the Foreign Secretary from among the members of the English Bar. The expense of maintaining these courts, so far as they are not self-supporting, is borne by the Diplomatic and Consular Vote, i.e., by the taxpayer of the United Kingdom.

**(2)—Extra-Territorial Jurisdiction in Respect of Offences Committed on Land by
British Subjects.**

1. The original criminal jurisdiction of the courts in England—which at common law was confined to offences committed within the body of the realm and was distinct from the jurisdiction exercised by the Admiral over British ships on the high seas and elsewhere—has from time to time been extended by Statute so as to enable those courts to try British subjects for certain offences committed on land outside the realm, whether in some other part of His Majesty's dominions or in foreign territory. Cases in which such jurisdiction has been conferred are treason (25 Edw. 3, st. 5, c. 2; 35 Hen. 8, c. 2), treason felony (11 & 12 Vic. c. 12); murder and manslaughter (Offences Against the Person Act, 1861 (24 & 25 Vic. c. 100, sections 9 and 10); bigamy (section 57 of that Act); offences against the Official Secrets Acts, 1911 and 1920 (1 & 2 Geo. V, c. 28, and 10 & 11 Geo. V, c. 75); the

Foreign Enlistment Act, 1870 (33 & 34 Vic. c. 90) ; misdemeanours committed in India (13 Geo. 3, c. 63, section 39) ; and offences committed by persons employed in any public service out of Great Britain (42 Geo. 3, c. 85, section 1). The enactments in question apply to all British subjects.

2. As regards the criminal jurisdiction of the Courts of the Dominions, the position appears to be that under the law as it stands at present that jurisdiction does not extend to offences committed outside the limits of their territory and territorial waters except in so far as it has been otherwise provided by Imperial enactments, including the Dominion Constitution Acts. Hence the Dominions, in the absence of authority conferred by Imperial enactments, are not in a position legally to apply their own criminal laws extra-territorially. On the principle laid down in *MacLeod v. Attorney-General for New South Wales* (1891), A.C. 445, the general authority in their Constitution Acts to make laws for peace, order and good government would not enable them to enact legislation conferring jurisdiction on their Courts to try British subjects for offences committed outside their territorial limits and waters.

(3)—Statutory Functions of British Consular Officers.

1. Certain functions are conferred on British consular officers by or under enactments of the Imperial Parliament, and, speaking generally, these functions are at present exercised by them in relation to any British subject who may be concerned irrespective of the part of the Empire from which he comes.

This section of this Chapter does not deal with functions performed by Consuls under the Merchant Shipping Act.

Notarial Duties.

2. Under the Commissioners for Oaths Acts, 1889, and 1891 (52 & 53 Vic. c. 10, and 54 & 55 Vic. c. 50) any British diplomatic or consular officer "exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit and also do any notarial act which any Notary Public can do within the United Kingdom ; and every oath, affidavit and notarial act administered, sworn or done by or before any such person, shall be as effectual as if duly administered, sworn or done by or before any lawful authority in any part of the United Kingdom," and any document bearing the seal and signature of any such official is to be admitted in evidence without proof of the seal or signature or of the official character of the officer concerned.

3. It would seem that this provision only makes the documents with which it deals valid in the United Kingdom, but it is understood that in practice consular officers perform the functions in question irrespective of the part of the Empire from which the applicant (if he be a British subject) comes, or in which the document is to be used.

4. Legislation has been passed by some of the Canadian Provinces and three of the Australian States on the lines of Section 6 of the Act of 1889—summarised above—and a similar provision has been made by rule in the Union of South Africa. Moreover, legislation has been passed by New Zealand and Newfoundland and three of the Australian States substantially re-enacting Section 11 of the Evidence Act, 1851 (14 & 15 Vic. c. 99), under which every document admissible in an English court without proof of seal or signature or of the official character of the officer concerned is made admissible to the same extent and for the same purposes in the courts of New Zealand, etc., without proof of seal or signature or the official character of the officer concerned. Dominion legislation of this kind, therefore, covers consular documents which are made admissible in English courts by the Act of 1889.

Foreign Marriages.

5. Under the Foreign Marriage Act, 1892 (55 & 56 Vic. c. 23), all marriages between parties, of whom one at least is a British subject, solemnized in accordance with the Act by or before a diplomatic or consular officer who is a marriage officer within the meaning of the Act (i.e., who holds a marriage warrant), "shall be as valid in law as if the same had been solemnized in the United Kingdom with a due observance of all forms required by law." The Foreign Marriages Order in Council, 1913, made under power conferred by the Act, provides the detailed regulations for the exercise of the function in question. The power which is given by the Act and Order to dispense with certain requirements as to notice, etc., is exercised by the Secretary of State for Foreign Affairs.

Apart from the question of persons professing polygamous religions, no distinction is made, in the application of the Act, between different classes of British subjects. If a Consul is requested to marry a British subject under the Act and the statutory requirements are complied with, he would not enquire from what part of the Empire the applicant came.

Employment of Children Abroad.

6. Under the Children (Employment Abroad) Act, 1913 (3 & 4 Geo. V, c. 7), certain functions are conferred upon consular officers in relation to children in respect of whom licences have been granted under the Act allowing them to go out of the United Kingdom for the purpose of singing, playing, etc., for profit.

CHAPTER IX.

CONSTITUENT AND FEDERATING INSTRUMENTS (INCLUDING THE COLONIAL BOUNDARIES ACT, 1895), RESERVATION, AND DISALLOWANCE.**(1) DOMINION CONSTITUTIONS.**

- (a) PROVISIONS REQUIRING BILLS TO BE RESERVED.**
- (b) PROVISIONS ENABLING DOMINIONS TO ALTER THEIR CONSTITUTIONS.**
- (c) EXPRESS LIMITATIONS IN DOMINION CONSTITUTIONS AS TO THE SUBJECTS ON WHICH LEGISLATION MAY BE ENACTED.**

(2) THE COLONIAL BOUNDARIES ACT, 1895.**(3) THE PREROGATIVE OF MERCY.****(4) THE COLONIAL STOCK ACTS.****(1)—Dominion Constitutions.****(A)—PROVISIONS REQUIRING BILLS TO BE RESERVED.***

Australia.—By Section 74 of the Constitution of the Commonwealth of Australia (1900) it is provided that the Commonwealth Parliament may make laws limiting the matters in which special leave to appeal from the High Court of Australia to His Majesty in Council may be asked. But proposed laws containing any such limitation shall be reserved by the Governor-General for His Majesty's pleasure.

Canada.—Nil.

Irish Free State.—Nil.

Newfoundland.—Nil.

New Zealand.—By Section 65 of 15 and 16 Vic. c. 72 (the New Zealand Constitution Act, 1852) the General Assembly of New Zealand is given power to alter the sums allocated by the schedule for the Governor's salary, the Judges, the establishment of the general government and native purposes respectively, but any Bill altering the salary of the Governor or the sum allocated to native purposes "shall be reserved for the signification of Her Majesty's pleasure thereon."

(This section is one of those (*vide post*) which the General Assembly is not empowered to alter or repeal).

South Africa.—Section 64 of the South Africa Act, 1909 (9, Edw. VII, c. 9), provides that all Bills repealing or amending that section or any of the provisions of Chapter IV under the heading "House of Assembly" and all Bills abolishing provincial councils or abridging the powers conferred on them under Section 85, otherwise than in accordance with the provisions of that section shall be reserved for the signification of His Majesty's pleasure.

Section 106 of the Act contains a provision similar to that in Section 74 of the Constitution of the Commonwealth of Australia (*ante*). By Section 25 of the Schedule to the Act which lays down the terms and conditions on which the Governor in Council may undertake the government of native territories transferred to the Union under Section 151 it is provided that all Bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.

* There are also provisions in certain other Imperial enactments requiring the reservation of Dominion legislation, viz., the Colonial Courts of Admiralty Act, 1890 (*see* page 14 above), and the Merchant Shipping Act, 1894 (*see* separate memorandum relating to merchant shipping legislation).

(B)—PROVISIONS ENABLING DOMINIONS TO ALTER THEIR CONSTITUTIONS.

Australia.—By Section 128 of the Constitution of the Commonwealth of Australia it is provided as follows :—

“ This Constitution shall not be altered except in the following manner :—

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors and members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of Representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto shall become law unless the majority of the electors voting in that State approve the proposed law.”

Canada.—Nil.

Irish Free State.—Article 50 of the Constitution of the Irish Free State set forth in the first Schedule to the “ Constituent Act ” set forth in the Schedule to the Irish Free State Constitution, 1922, provides as follows :—

“ Amendments of this Constitution within the terms of the Scheduled Treaty may be made by the Oireachtas, but no such amendment, passed by both Houses of the Oireachtas, after the expiration of a period of eight years from the date of the coming into operation of this Constitution, shall become law, unless the same shall, after it has been passed or deemed to have been passed by the said two Houses of the Oireachtas, have been submitted to a Referendum of the people, and unless a majority of the voters on the register shall have recorded their votes on such Referendum, and either the votes of a majority of the voters on the register, or two-thirds of the votes recorded, shall have been cast in favour of such amendment. Any such amendment may be made within the said period of eight years by way of ordinary legislation and as such shall be subject to the provisions of Article 47 hereof.”

The Article 47 referred to above provides for the suspension of the operation of Bills passed by both Houses and their submission by Referendum to the decision of the people.

Newfoundland.—Nil.

New Zealand.—Section 2 of 20 and 21 Vic. c. 53 provides that 15 and 16 Vic. c. 72 (New Zealand Constitution Act, 1852), may be altered or repealed by the General Assembly of New Zealand except Sections 32, 44, 46, 47, 53, 54, 56–59, 61, 64, 65, 71 and 80, which contain provisions relating (*inter alia*) to the establishment of a General Assembly and its power to make laws, assent to and reservation and disallowance of laws, the grant of the sums mentioned in the schedule for civil and judicial services, and the power of the General Assembly to alter such sums, and the maintenance of native laws and customs.

South Africa.—By Section 152 of the South Africa Act, 1909, it is provided as follows :—

“Parliament may by law repeal or alter any of the provisions of this Act :

Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered : and

Provided further that no repeal or alteration of the provisions contained in this Section, or in Sections 33 and 34 (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period), or in Sections 35 and 137, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be deemed to have been duly passed by both Houses of Parliament.”

(C)—EXPRESS LIMITATIONS IN DOMINION CONSTITUTIONS AS TO THE SUBJECTS ON WHICH LEGISLATION MAY BE ENACTED.

There do not appear to be any such express statutory limitations in any of the Dominion Constitutions on the general power to legislate for the peace, order and good government of the Dominion, except that (1) in certain cases the legislative capacity of a Federal Parliament is limited in consequence of the distribution under the Constitution of the legislative power between itself and the Provincial or State legislatures ; and (2) in the case of the Irish Free State there is an express limitation laid down in Section 2 of the “Constituent Act” (referred to above) under which any law passed by the Irish Free State Legislature which is in any respect repugnant to any of the provisions of the Articles of Agreement for a Treaty between Great Britain and Ireland shall, to the extent only of such repugnancy, be absolutely void and inoperative, and the Parliament and the Executive Council of the Irish Free State shall respectively pass such further legislation and do all such other things as may be necessary to implement the said Articles of Agreement.

In the case of New Zealand, whilst there is no express limitation as to the subjects on which legislation may be enacted, Section 53 of 15 and 16 Vic. c. 72 (the New Zealand Constitution Act, 1852) gives the General Assembly power “to make laws for the peace, order, and good government of New Zealand, provided that no such laws be repugnant to the law of England.” This Section, as indicated under (B) above, is one of the Sections of the Act of 1852 which the General Assembly of New Zealand has no power to alter.

(2)—The Colonial Boundaries Act, 1895.

(58 & 59 Vic. c. 34.)

1. This Act enables the boundaries of a Colony to be altered by Order in Council or Letters Patent but provides that the consent of a self-governing Colony must be required for the alteration of their boundaries.

The self-governing Colonies as set out in the Schedule were :—

Canada,
Newfoundland,
New Zealand,
The 6 Australian States, and
The Cape of Good Hope, and
Natal.

2. The Commonwealth Constitution Act (Section 8) provided that the Colonial Boundaries Act should not apply to any Colony which became a State of the Commonwealth, but that the Commonwealth should be taken to be a self-governing Colony for the purposes of that Act.

3. The South Africa Act, 1909 (Section 7) provided that upon any Colony entering the Union the Colonial Boundaries Act should cease to apply to that Colony but should apply to the Union.

4. The Act, therefore, applies to the Commonwealth and the Union, in each case, as a whole and no longer to their component States or Provinces individually. Moreover, there are provisions in the Commonwealth Constitution for the admission of new States (Section 121), the acquisition of Territories (Section 122) and the alteration of the limits of States (Section 123) and somewhat similar provisions in the South Africa Act as to the alteration of the boundaries of the Provinces (Section 149) and the transfer to the Union of other South African Territories (Section 151).

5. In the case of the Commonwealth at any rate resort to the Colonial Boundaries Act may in future be unnecessary. For example, if it should be decided to hand over any islands in the Pacific to the Commonwealth, it could be done in pursuance of Section 122 of the Commonwealth Constitution though this would require an Order in Council or Letters Patent issued here. Territories handed over in this way, however (*e.g.*, Norfolk Island and Papua), are not included within the boundaries of the Commonwealth and do not form part of it.

6. The Cook Islands were included in New Zealand (before it became a Dominion) by an Order in Council of 13th May, 1901, under the Colonial Boundaries Act.

(3)—The Prerogative of Mercy.

1. The manner in which the prerogative of mercy, always delegated to the Governor-General or Governor of a Dominion or Colony, is to be exercisable by him is prescribed in the Letters Patent constituting his Office and/or in the Royal Instructions. Nevertheless, the prerogative of mercy being an essential function of any system of government may be and not infrequently is the subject of Dominion legislation. In practice, however, Bills which affect the prerogative have usually been reserved.

2. The provisions of the Letters Patent and/or Instructions relating to this matter have varied from time to time, but at the present day are substantially to the same effect in the case of all the Dominions. In Canada the matter is dealt with in the Instructions only, and by them the Governor-General is authorised (1) to grant a pardon to any person convicted of any offence against the laws of the Dominion, either free or subject to lawful conditions, to respite the execution of any sentence, and to remit any fines, penalties or forfeitures which may become due and payable to the Crown; but except where the offence has been of a political nature he is forbidden to make it a condition of remission of sentence that the offender shall be banished from or shall absent himself from the Dominion; (2) to pardon any accomplice, when an offence has been committed against the laws of the Dominion for which the offender may be tried within the Dominion, who shall give such information as shall lead to the conviction of the principal offender. The Governor-General may not pardon or reprieve without first receiving, in capital cases, the advice of the Dominion Ministers, and in other cases the advice of at least one Minister; and in any case in which the pardon or reprieve might directly affect Imperial interests, or those of any country or place beyond the jurisdiction of the Government of the Dominion, he is enjoined before deciding as to either pardon or reprieve to take those interests specially into his own personal consideration in conjunction with such advice as aforesaid. The prerogative is exercised in the Canadian Provinces by the Lieutenant-Governor by virtue of provincial Statutes,

but only in the case of offences against the laws of the provinces. Though by Section 91 of the British North America Act, 1867, the Dominion Parliament has an exclusive power of legislating with regard to criminal law and procedure in criminal matters, by Section 92 each province has the exclusive right of legislating with respect to the administration of justice in the provinces including the constitution, maintenance, and organisation of provincial courts of criminal jurisdiction, and, with respect to the imposition of punishment by fine, penalty, or imprisonment, for the enforcing of any law of the province made in relation to any matter on which the province has power to legislate. The powers of the Governor-General and of the Lieutenant-Governors are thus mutually exclusive.

3. In Australia the position is different, because there is no reservation to the Commonwealth Parliament of the exclusive right of legislation with regard to criminal law, which thus remains a matter for the constituent States. Hence, while the scope of the Governor-General's authority to pardon as set out in the Instructions is precisely the same, *mutatis mutandis*, as that of the Governor-General of Canada, it is in practice very much more restricted, inasmuch as the offences against the laws of the Commonwealth in respect of which he alone has power to pardon are few in number. On the other hand, each of the State Governors exercises the prerogative within the limits of his own State, the manner in which it is to be exercised being prescribed partly in the Letters Patent constituting the Officer of Governor and partly in the Instructions; these being substantially the same within those limits as those of the Governor-General himself.

4. The powers of the Governor-General of New Zealand are contained partly in the Letters Patent constituting his Office and partly in the Instructions and are to the same effect as in the case of Canada and the Commonwealth.

5. In the case of the Union of South Africa, there are certain differences. In the first place, the Instructions permit it to be made a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from the Union, unless he be a natural born or naturalised British subject. Secondly, in capital cases, though the Governor-General must consult his Executive Council, yet he has to decide either to extend or to withhold a pardon or reprieve according to his own deliberate judgment, whether the members of the Executive Council concur therein or otherwise. Lastly, there is no injunction to him in his Instructions to take specially into his own personal consideration, in conjunction with the advice of the Executive Council, any case in which a pardon or reprieve might directly affect Imperial interests or the interests of any country or place beyond the jurisdiction of the Government of the Union.

6. In Newfoundland the authority delegated to the Governor partly by the Letters Patent constituting his Office and partly by his Instructions is similar to that of the Governor-General of the Union of South Africa, save that there is no power to make banishment of an alien a condition of the pardon or reprieve.

7. In the Irish Free State the Instructions are identical with those in the case of Canada.

(4)—The Colonial Stock Acts.

1. The Colonial Stock Act, 1900 (63 & 64 Vic. c. 62), provides:—

- (a) That a Trustee may, under the powers of the Trustee Act, 1893 (56 & 57 Vic. c. 53), invest in any Colonial Stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892* (40 & 41 Vic. c. 59, and 55 & 56 Vic. c. 35), and with respect to which there had been observed such conditions as the Treasury may by Order notify in the London Gazette prescribed;

* The Act of 1877 requires a register to be kept in the United Kingdom. That of 1892 merely recognises transfer by Deed as well as transfer by inscription.

(b) That the restrictions in Section 2 (2) of the Trustee Act, 1893, shall apply, i.e., that a Trustee may not purchase, at a price over redemption value, Stock with less than 15 years to run, or purchase Stock liable to be redeemed at par or other fixed rate at a price exceeding 15 per cent. above par, or such other rate ;

(c) That the Treasury shall keep a list of any Colonial Stocks in respect of which the provisions of the Act are for the time being complied with, and shall publish it.

2. The conditions determined by the Treasury were laid down in 1900, S.R. and O. 1900 No. 926. They are :—

(1) The Colony shall provide by legislation for the payment out of the revenues of the Colony of any sum which may become payable to Stockholders under any Judgment, Decree, Rule, or Order of a Court in the United Kingdom ;

(2) The Colony shall satisfy the Treasury that adequate funds (as and when required) will be made available in the United Kingdom to meet any such Judgment, Decree, Rule, or Order ;

(3) The Colonial Government shall place on record a formal expression of their opinion that any Colonial legislation which appears to the Imperial Government to alter any of the provisions affecting the Stock to the injury of the Stock holder, or to involve a departure from the original contract in regard to the Stock, would properly be disallowed.

APPENDIX.

Colonial Laws Validity Act, 1865.

(28 & 29 Vic. c. 63.)

An Act to remove Doubts as to the Validity of Colonial Laws. [29th June, 1865.]

WHEREAS Doubts have been entertained respecting the Validity of divers Laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's Colonies, and respecting the Powers of such Legislatures, and it is expedient that such Doubts should be removed :

Be it hereby enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

Definitions : 1. The Term "Colony" shall in this Act include all of Her Majesty's Possessions abroad in which there shall exist a Legislature, as herein-after defined, except the Channel Islands, the *Isle of Man*, and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of *India* :

"Legislature," "Colonial Legislature:" The Terms "Legislature" and "Colonial Legislature" shall severally signify the Authority, other than the Imperial Parliament or Her Majesty in Council, competent to make Laws for any Colony :

"Representative Legislature:" The Term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a Legislative Body of which One Half are elected by Inhabitants of the Colony :

"Colonial Law:" The Term "Colonial Law" shall include Laws made for any Colony either by such Legislature as aforesaid or by Her Majesty in Council :

Act of Parliament, &c. to extend to Colony when made applicable to such Colony : An Act of Parliament, or any Provision thereof, shall, in construing this Act, be said to extend to any Colony when it is made applicable to such Colony by the express Words or necessary Intendment of any Act of Parliament :

"Governor:" The Term "Governor" shall mean the Officer lawfully administering the Government of any Colony :

"Letters Patent." The Term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of *Great Britain and Ireland*.

Colonial Law when void for Repugnancy. 2. Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Colonial Law when not void for Repugnancy. 3. No Colonial Law shall be or be deemed to have been void or inoperative on the Ground of Repugnancy to the Law of *England*, unless the same shall be repugnant to the Provisions of some such Act of Parliament, Order or Regulation as aforesaid.

Colonial Law not void for Inconsistency with Instructions. 4. No Colonial Law, passed with the Concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any Instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorizing such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.

Colonial Legislature may establish, &c. Courts of Law. Representative Legislature may alter Constitution. 5. Every Colonial Legislature shall have, and be deemed at all Times to have had, full Power within its Jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the Constitution thereof, and to make Provision for the Administration of Justice therein ; and every Representative Legislature shall, in respect to the Colony under its Jurisdiction, have, and be deemed at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature ; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the Time being in force in the said Colony.

6. The Certificate of the Clerk or other proper Officer of a Legislative Body in any Colony to the Effect that the Document to which it is attached is a true Copy of any Colonial Law assented to by the Governor of such Colony, or of any Bill reserved for the Signification of Her Majesty's Pleasure by the said Governor, shall be *prima facie* Evidence that the Document so certified is a true Copy of such Law or Bill, and, as the Case may be, that such Law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the Governor; and any Proclamation purporting to be published by Authority of the Governor in any Newspaper in the Colony to which such Law or Bill shall relate, and signifying Her Majesty's Disallowance of any such Colonial Law, or Her Majesty's Assent to any such reserved Bill as aforesaid, shall be *prima facie* Evidence of such Disallowance or Assent.

Certified
Copies of
Laws to be
Evidence
that they are
properly
passed.
Proclama-
tion to be
Evidence of
Assent and
Disallow-
ance.

And whereas Doubts are entertained respecting the Validity of certain Acts enacted or reputed to be enacted by the Legislature of *South Australia*: Be it further enacted as follows:

7. All Laws or reputed Laws enacted or purporting to have been enacted by the said Legislature, or by Persons or Bodies of Persons for the Time being acting as such Legislature, which have received the Assent of Her Majesty in Council, or which have received the Assent of the Governor of the said Colony in the Name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the Date of such Assent for all Purposes whatever; provided that nothing herein contained shall be deemed to give Effect to any Law or reputed Law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful Disallowance or Repeal of any Law.

Certain Acts
enacted by
Legislature
of South
Australia
to be valid.

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CONFIDENTIAL.

APPENDIX *III*

Proposed Sub-Conference
ON
Merchant Shipping Legislation.

**Preparatory Memorandum on Existing Merchant
Shipping Legislation.**

December, 1928.

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CONFIDENTIAL.

Proposed Sub-Conference
ON
Merchant Shipping Legislation.

**Preparatory Memorandum on Existing Merchant
Shipping Legislation.**

December, 1928.

Confidential.

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1. The reference to the special Sub-Conference is :—

"To consider and report on the principles which should govern in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

2. For the purpose of this inquiry a survey has been made of the existing Acts with special reference to their application to His Majesty's dominions calling attention to what appear to be salient features of this legislation.

The General Position.

3. The general position is that the Constitutions of the various self-governing Dominions give power to the Legislatures of those Dominions to legislate for the peace, order, and good government of the Dominion. This power, except where extended by definite Imperial enactment or by necessary implication, is confined to the territorial limits of the Dominions, including their territorial waters. An example of such an exception is Section 5 of the Commonwealth of Australia Constitution Act, which provides that the laws of the Commonwealth shall be in force on all British ships whose first port of clearance and whose port of destination are in the Commonwealth.

4. Further, attention should be called to the provisions of Section 2 of the Colonial Laws Validity Act, 1865.

5. As regards merchant shipping legislation, the Merchant Shipping Acts, 1894 to 1906, apply to a large extent to the whole of His Majesty's dominions and to all British ships. This position, however, is qualified by the terms of Sections 735 and 736 of the Merchant Shipping Act, 1894 (the Principal Act), which give to the Legislatures of British Possessions certain powers of legislation with regard to merchant shipping. By Section 735 provision is made that any British Possession may repeal any of the provisions of the Merchant Shipping Act (other than those of Part III, which relate to emigrant ships) relating to ships registered in that Possession. It is to be observed that this power may only be exercised subject to confirmation by His Majesty in Council, and that it is limited to ships registered in the Possession concerned. The question as to the powers of the Legislature of a British Possession to legislate on these matters after it has exercised its power to repeal the provisions of the Principal Act under Section 735 of that Act is a matter of some doubt. One view is that the power to repeal given by the Section necessarily implies a power to legislate, subject to the limitations and restrictions imposed by the Section, and, if this is the true view, then it would seem to follow that any such legislation would apply to vessels registered in the Possession, even when outside the territorial limits of the Possession. The other view is that, once having exercised the power to repeal given by Section 735, the Possession's power to legislate is governed by the Constitution of the Possession, and that it is limited to the peace, order, and good government of that Possession; such legislation, therefore, would not have any extra-territorial effect.

By Section 736 provision is made that any British Possession may, on the conditions stated therein (including equality of treatment of all British ships), regulate its own coastal trade, but such power is likewise subject to the confirmation of the Act or Ordinance concerned by His Majesty in Council.

The Act of 1906 is an amending statute *in pari materia* with the Principal Act, and contains a provision that it shall be construed as one therewith.

6. The general power of legislation, therefore, vested in a Dominion Parliament is as follows :—It can (subject to the limitations mentioned above) legislate for the purposes of regulating its coasting trade, and repeal any provisions of the Merchant Shipping Acts which relate to vessels registered in that Dominion.

The Provisions of the Merchant Shipping Acts.

7. Dealing now with the various parts of the Merchant Shipping Acts, 1894 to 1906, the position appears to be as follows :—

Part I of the Principal Act (amended by Sections 50 to 55, both inclusive, of the Act of 1906) which deals with ownership, registry, measurement for tonnage, nationality, and forfeiture to the Crown for certain offences, is specifically applied by Section 91 to the whole of His Majesty's dominions and all places where His Majesty has jurisdiction.

The question arises whether the power to repeal given by Section 735 applies to the provisions of *Part I*. The view taken hitherto has been that as registration under *Part I* is a condition which must be in existence before Section 735 can operate there can be no power under Section 735 to repeal *Part I* which contains the machinery for registration.

8. *Part II* of the Principal Act, dealing with masters and seamen (as amended by *Part III*, dealing with seamen's food, *Part IV*, containing provisions as to relief and repatriation of distressed seamen and seamen left behind abroad, and also Sections 56 to 65, both inclusive, of the Act of 1906) applies in the manner set out in Sections 261 and 264 of the Act of 1894. Section 261 provides that certain provisions relating to seamen's wages, the discharge of seamen, and similar matters, shall apply to all sea-going British ships except when the ship is within the jurisdiction of the Government of the British Possession in which it is registered, and Section 264 gives power to adapt or apply by local legislation any provisions of *Part II* which do not otherwise apply to ships registered in that Possession, or trading with, or being at any port therein. Where such provisions have been adapted or applied, it is provided that they shall have effect throughout His Majesty's dominions, and in all places where His Majesty has jurisdiction, in the same manner as if it were enacted in the Principal Act. It is significant to notice that by Section 265 provision is made that where there is any conflict of laws on the subject of *Part II* the case is to be governed by the provisions of the Imperial Act.

9. The provisions of *Part III* of the Principal Act (amended by *Part II* of the Act of 1906), which deal with passenger and emigrant ships, apply to all British ships, no matter where they are registered, subject to any contrary intention in any particular section. The sections relating to emigrant ships cannot be repealed by Dominion legislation as Section 735 definitely excludes such a power. The reason for this is that the emigrant-ship provisions were originally enacted in the *Passengers Acts*, and there was no provision in those Acts giving a power of repeal to Legislatures in British Possessions. The *Passengers Acts* were amalgamated with the Merchant Shipping Acts by the Merchant Shipping Act of 1894; and, as that Act was one of pure consolidation, it could not give a power of repeal not given by the original Act. It should be mentioned, however, that in this *Part* of the Act as amended by *Part II* of the Act of 1906 a passenger steamer is defined as one carrying passengers to or from any place or between any places in the United Kingdom, and that Section 284 definitely sanctions the survey of passenger steamers in a British Possession where the local Legislature makes adequate provisions for granting efficient certificates and gives power to His Majesty by Order in Council to declare that such certificates shall have effect as if granted under the Imperial Act, so that such certificates and any conditions and regulations relating thereto apply to the vessel extra-territorially.

10. *Part IV* of the Principal Act deals with fishing boats, and does not generally extend to oversea vessels, as by Section 372 it is provided that *Part IV* shall not, except where otherwise expressly provided, apply to any British Possession.

11. *Part V* of the Principal Act (amended by *Part I* of the Act of 1906) deals with safety, prevention of collisions, reports of accidents, etc., and applies, speaking generally, throughout the Dominions, though the provisions in some cases are

limited to vessels leaving ports in the United Kingdom only. Section 444 enables the Legislature of a British Possession to enact provisions as to load-line for ships registered there, which, if they are declared by Order in Council to be equivalent to the provisions in the Merchant Shipping Act, are deemed to have the same effect as though enacted in the principal Act. Such legislation will have extra-territorial application by reason of the provisions of the Imperial Act and the Order in Council thereunder.

12. *Part VI* deals with shipping inquiries and courts and is somewhat in a different category from the other parts of the Act because provision is made by Section 478 for the Legislature of a British Possession to authorise courts or tribunals to hold inquiries into casualties occurring on or near the coasts of such Possessions or to vessels registered in those Possessions in cases where an investigation or inquiry has not been commenced in the United Kingdom. This section, however, goes on to provide that the Board of Trade may order a re-hearing of any inquiry held in a British Possession, or failing such an Order, there is a right of appeal to the High Court in England except in the case of vessels registered in the Possession. Moreover, the Board of Trade have power under Section 474 to re-issue and return a certificate of a master, etc., which has been cancelled or suspended in a British Possession. Furthermore, by Section 66 of the Act of 1906, the right of appeal is extended to the owner of the ship or any other person who has an interest in the inquiry and has appeared and is affected by the decision of the court.

Sections 480 to 485 of the Principal Act deal with the constitution and powers of "naval courts"; and, by Section 486, these provisions are made applicable to all ships registered in a British Possession, when those ships are out of the jurisdiction of their respective Governments.

The powers of a naval court are extended by Section 67 of the Act of 1906, which contains a provision that the section may be applied by Order in Council to any British Possession the Legislature of which consents thereto. By Section 68 of that Act any person aggrieved by an order of a naval court forfeiting wages or by a decision of such court as to wages, fines, or forfeitures may appeal to a Divisional Court of the Probate, Divorce and Admiralty Division of the High Court of Justice in England who may confirm, quash, or vary the order or decision appealed against.

13. *Part VII*, dealing with the delivery of goods, is limited in its application to the United Kingdom.

14. *Part VIII*, which deals with the liability of shipowners, is extended by Section 509, unless the context otherwise requires, to the whole of His Majesty's dominions.

15. *Part IX* provides machinery for dealing with wreck and salvage occurring on the coast of the United Kingdom.

16. *Part X* has been repealed by the Pilotage Act, 1913, which applies only to the United Kingdom and the Isle of Man.

17. *Part XI* deals with lighthouses, and in the main applies only to lighthouses on the coasts of Great Britain and Ireland; but provision is made by Section 670 and the following sections for the collection of dues, etc., on certain lights erected at or near the coasts of any British Possession, the expense of maintaining which are borne by the General Lighthouse Fund.

18. *Part XII*, which has been amended by the Merchant Shipping (Mercantile Marine Fund) Act, 1898, deals with finance, and in the main applies only to the United Kingdom.

19. *Part XIII* deals with legal proceedings; and, by Sections 711 and 712, this Part of the Act, unless otherwise provided, applies to the whole of His Majesty's dominions. Provision is made for difference of procedure in the courts of British

Possessions. Certain of the provisions have the effect of conferring jurisdiction on the courts of Colonial Possessions in cases which would otherwise, by reasons of their extra-territorial character, not fall within such jurisdiction, e.g., by Section 684 an offence is deemed to be committed in the place in which the offender may be; by Section 685 jurisdiction is given to the local court over ships lying off the coasts; by Section 686 jurisdiction is given over any person found within the jurisdiction of any court in His Majesty's dominions in respect of any offences committed by a British subject on board a British ship on the high seas or in any foreign port or harbour or on board any foreign ship or whether by a British subject or a foreigner on board any British ship on the high seas; by Section 687 offences committed by British seamen at foreign ports are to be within the Admiralty jurisdiction. By Section 689 provision is made for the conveyance of British seamen to a British Possession to answer offences committed out of His Majesty's dominions. The procedure for inquiry into cause of death on board a foreign-going British ship provided for by Section 690 is expressly excluded from applying to ships registered in a British Possession when within the jurisdiction of the Government of that Possession. By Section 691, when a witness cannot be produced, his deposition shall be admissible in the Court of any British Possession. By Section 699 (2) (b) fines recovered in any British Possession are to be paid over to the Public Treasury of that Possession. By Section 711, offences under the Act shall in any British Possession be punishable by any court or Magistrate by whom like offences are ordinarily punishable or as may be determined by any Act or Ordinance having the force of law in that Possession.

20. *Part XIV* contains general provisions relating to powers of administration and control, and includes Sections 735 and 736 referred to in paragraph 4 above. The general superintendence over all shipping matters is vested in the Board of Trade by Section 713. By Section 723, among the officers empowered to see that the Act is complied with is included any Chief Officer of Customs in any place in His Majesty's dominions. The exemption (by Section 731) of General Lighthouse Authorities (as defined in the Act) and the Board of Trade from rates, dues, and taxes appears to extend to all British Possessions, although, on the other hand, by Section 732 the express exemption from harbour dues only applies to the United Kingdom. By Section 734, power is given by Order in Council to apply the provisions of the Merchant Shipping Acts to foreign ships, which provisions would accordingly fall to be recognised in all British Possessions. By Section 744, while ships engaged in the whale, seal, walrus or Newfoundland cod fisheries are to be deemed foreign-going ships for the purposes of the Act, not fishing boats, an exception is made of ships engaged in the Newfoundland cod fisheries belonging to ports in Canada or Newfoundland. By Section 90 of the Act of 1906, regulations may be made by Order in Council for the registration of Government ships as British ships; but nothing is to affect the powers of the Legislature of any British Possession to regulate any Government ships under the control of the Government of that Possession.

The Principles Underlying the Merchant Shipping Acts.

21. Looking at the Merchant Shipping Acts as a whole, with special reference to their application to His Majesty's Dominions and Colonies, the following broad points suggest themselves:—

The Merchant Shipping Acts are not a code in the ordinary sense of the term, but a long series of Acts passed at intervals over a period of over 70 years. The first considerable Merchant Shipping Act, passed in 1854, was followed by a large number of amending Acts, which were all consolidated in 1894, and the Act of 1894 has in its turn been amended by many subsequent Acts. As might be expected the legislation deals only with those features of shipping which absolutely required statutory regulation at the time, and does not deal with these points in a uniform manner, some being dealt with in great detail, while on others only broad principles are laid down, the details being left to be worked out in the form of regulations.

22. It has been pointed out in preceding paragraphs that certain parts of the Merchant Shipping Acts, dealing with merely local matters, apply only to the United Kingdom; and the provisions relating to fishing boats, delivery of goods,

wreck and salvage, pilotage, lighthouses and the Mercantile Marine Fund, or its successor the General Lighthouse Fund, can be left out of consideration for the purposes of the present memorandum. There remain those parts of the Acts which relate to registry, masters and seamen, safety of passenger and other ships, shipping inquiries and courts, liability of shipowners, legal proceedings, and the supplemental or general provisions, and in so far as these matters are concerned the Acts treat merchant shipping as an Imperial subject. They indicate endeavour to provide on an Imperial basis for all contingencies of British mercantile navigation throughout the Empire, partly by direct enactment and partly by optional local enactment (Sections 711, 735 and 736).

23. The rules as to registry, nationality, and tonnage are the same for all. The provisions as to the rights of seamen and as to discipline on board ships apply throughout His Majesty's dominions, except when the ship is within the jurisdiction of the Possession in which it is registered. The provisions as to safety are, speaking generally, applicable to British ships wherever they are. The provisions as to wreck inquiries are of special interest, as the Acts devote a great deal of attention to inquiries held in British Possessions. Power is given to the Legislature in a British Possession to authorise any court or tribunal to deal with casualties to British ships (1) wherever they occur, if the ship is registered in the Possession; (2) when the casualty occurs on or near the coast of the Possession or on a voyage to it; (3) whenever witnesses are found in the Possession.

24. These Courts of Inquiry, like Courts of Inquiry in the United Kingdom, are given powers to cancel or suspend the certificates of masters and officers, but (a) they must report to the Board of Trade and send them the evidence; and (b) the Board of Trade may either alter the sentence or order a re-hearing, the object apparently being to secure uniformity of procedure and some measure of co-ordination.

25. The same anxiety to secure uniformity of procedure throughout His Majesty's dominions is very marked in the provisions relating to legal proceedings. All courts throughout His Majesty's dominions are given jurisdiction to try offences (a) by British subjects on British ships on the high seas or in foreign ports; (b) by foreigners on British ships on the high seas; if the person concerned is found within the jurisdiction of the court.

26. Offences against the Merchant Shipping Acts are punishable in any British Possession by any court by which an offence of like character is ordinarily punishable, or as may be determined by local law.

27. Definite rules are laid down as to the punishment for offences and the time limit for summary proceedings; also as to such matters as admissibility of evidence, distress on ship, etc. The object was clearly to secure that offences arising on, or in connection with, British ships should be dealt with in a uniform manner throughout the Empire. The whole of His Majesty's dominions is regarded as one for these purposes and there is a provision that when offences are committed by seamen on a British ship out of His Majesty's dominions or on the high seas, a Consul may send the offenders with the witnesses to the nearest convenient British court (Section 689).

28. While considerable emphasis is thus laid on uniform principles and uniform procedure, the Acts are very elastic in their application to British Possessions, and this to an extent which is surprising, considering the dates at which the Acts were passed. Section 735, which gives power to repeal the provisions of the Principal Act, dates from 1854, and Section 736, which gives power to regulate the local coasting trade, dates from 1869.

29. Throughout the Acts there occur provisos that certain provisions are not to apply to ships registered in a British Possession when they are within that Possession; and a very great deal of care has clearly been taken from an early stage in the legislation to respect the position and rights of other Legislatures.

In recent years this tendency has been much more marked, and all the Merchant Shipping Acts passed since 1910 are either expressly limited to ships registered in the United Kingdom and ships visiting the United Kingdom, or the self-governing Dominions are expressly excluded from their operation. For instance, the Maritime Conventions Act, 1911, applies throughout His Majesty's dominions, except Canada, Australia, New Zealand, South Africa, and Newfoundland. The Merchant Shipping (Convention) Act, 1914, has the same limitation, India being added to the list. The British Ships (Transfer Restriction) Act, 1915, is similarly limited. The Merchant Shipping (Wireless Telegraphy) Act, 1919, applies to sea-going British ships registered in the United Kingdom, and to other ships only when they are within ports of the United Kingdom. The Merchant Shipping (International Labour Conventions) Act, 1925, applies to vessels registered in the United Kingdom; but there is power to extend the application by Order in Council to ships registered in any British Possession outside the United Kingdom other than India and His Majesty's Dominions, including the Irish Free State. The Merchant Shipping (Equivalent Provisions) Act, 1925, provides that, where British ships registered outside the United Kingdom are required by their own law to comply with provisions which are equally effective with the provisions of the Merchant Shipping Acts applicable to ships when they are within ports of the United Kingdom, an Order in Council may direct that compliance with the local law of the Possession shall be accepted as compliance with the Merchant Shipping Acts.

December, 1928.